THE

Speeches

OF

MR. JACOB BARKER

AND HIS

COUNSEL,

ON THE

TRIALS FOR CONSPIRACY,

WITH

Documents relating thereto.

NEW-YORK.

PRINTED BY WILLIAM A. MERCEIN, CORNER OF BURLING-SLIP AND WATER-STREET.

1827.

CONTENTS.

PART I.

PART II.

COURT OF OYER AND TERMINER.

SECOND TRIAL,

&c. &c.

Monday, November 20th, 1826.

The Court of Oyer and Terminer were organised this morning. After the names of the Grand Jury had been called, Judge Edwards addressed to them a brief and appropriate charge, in which he pointed out their duties and relations to the court, and those on whose conduct they were to pass.

The clerk then proceeded to call the panel of petit jurors, which having been concluded about half past one o'clock, the names of the defendants, Henry Eckford, Joseph G. Swift, Thomas Vermilyea, Wm. P. Rathbone, Matthew L. Davis, Mark Spencer, George W. Brown and Jacob Barker, were called, and being asked if they were ready for trial, answered that they were.

Here Mr. Barker addressed the court, and said that he desired to be allowed a separate trial. He understood that the court had the power, if they saw fit to execute it, to change the classifications of the indicted individuals. The District Attorney had informed him, that all the persons named in this indictment were not now to be tried, and he earnestly petitioned the court that he might be separated from those persons joined

with him in the indictment. He did not make this application before, because it could not have been made with propriety, as at the commencement of the previous trial, the court did not possess sufficient information to know whether it was not essential that the parties should be tried together. But now, he considered that the utter distinction between his case and those of the other defendants had been sufficiently shown, and he asked the court to separate him from those individuals. There could be no necessity for his being joined with them. The interests of public justice did not require it; it was not dictated by propriety; and, on the other hand, his interest imperiously demanded the separation. Here were transactions relating to several institutions combined together; and such was the confusion occasioned by this heterogenous classification, that, after a tedious trial of one month, even some of the counsel were at a loss to know the connection of the facts produced in evidence, and to separate and distinguish its proper bearing upon the various heads: and if to professional gentlemen, accustomed to sift such intricate affairs, this trial presented such difficulties, how could the jury be expected to possess that clear and distinct knowledge of the nature and extent of the evidence, which was necessary to enable them to form a decision? Under these considerations, he demanded to be separated, and to be tried alone—he demanded it as a right, which he should expect from the justice, if not from the courtesy, of the court. He wished to stand upon his own bottom; to be tried by his own merits, and on them alone to stand or fall. He would not have asked this separation, had he thought that it would have a tendency to change the verdict of a jury

upon the merits; but as it might prevent misconception and error, he thought the request could not, in reason, be opposed. He was willing, nay, he wished to be tried first.

Judge Edwards said, that the Grand Jury having deliberated on the subject, had indicted the whole number of the defendants, for having conspired together for the accomplishment of unlawful objects. This was the state of the case, and nothing was now offered to the court to induce a change. Mr. Barker had referred to the former trial, and if he intended any thing by this reference, it must have been to direct the discretion of the court. The court was, however, of opinion, that if there was any charge against Mr. Barker, it is of being concerned with the other defendants, therefore, his trial must be connected with theirs, and the whole run the same course. If the charge against him had, in any way, been distinct, then it might have been proper to make the separation now requested; but there was no charge against him not connected with the other defendants. The court, therefore, saw no reason to authorise them in granting the request of Mr. Barker for a separate trial.

Mr. Barker said he believed that the chain was now broken which had bound the defendants together, as he understood from the District Attorney, that he intended to withdraw the names of Messrs. Eckford Swift and Rathbone from the indictment, and try them separately; and if this could be done by the District Attorney, he should suppose, that it could be done by the Court, if they should see fit. If he understood the matter right, the Court had a right to try each one of the individuals separately, and by doing it in this case, the facts to go before the jury would be simplified and make a decision more easy for them

Judge Edwards said that this was the first intimation the court had had of this desire on the part of Mr. Barker. The opinion expressed just now by the court was in no way changed. But the inconvenience of acceding to this request would be very great. There must be six trials where but one is required, and much of the same matter must be these times repeated. The court could not see any difficulty under which Mr. Barker laboured, neither could they see how he was entitled to be separated from the other defendants.

Mr. Barker said he was unwilling to detail the grounds for his desire to be tried separately: but he was necessiated to go so far as to say, that it had been shown that he was a large stockholder in the Fulton bank, and one who had been as much injured as any one by the depreciation of the stock. Was it then consistent that he should be included in the same charge of defrauding the Fulton bank, with persons who it was alleged had injured the stock by their improper conduct, and who had thus essentially injured his own interests in this institution? The stock had depreciated one half, and if so, he (Mr. Barker) had lost in that proportion, and how could he rationally be supposed to have had a part in a fraud by which he himself was cheated. He would put the question to the Court whether he could properly be tried for such a fraud in connexion with others.

The matter here dropped. Judge Edwards remarked that as the Common Council met in the evening the court thought fit to adjourn. The District Attorney urged that a jury might be impanneled. But the Judge thought it expedient to defer further proceedings until to-day, and the adjournment was announced.

Tuesday, November 21st, 1826.

Judge Edwards said that the opinion of the court remained unaltered as to the application made yesterday by Mr. Barker.

Mr. Barker wished to know whether the court would allow the jurors to be called who were not here yesterday.

Judge Edwards. They have been fined.

Mr. Barker. That decision regards the court, but my question relates to the defendants. The panel has been very much reduced, and we feel it important that it should be as large as possible. The Court did not accede to the application.

Some discussion here took place on the question as to the mode of examining witnesses, some part of which we could not hear. We understood the counsel to demand that the same questions should be put by the Court as in the former trial.

Judge Edwards said that the questions might be put by the counsel, and they had the right of challenging and probing the motives and feelings of the witnesses, and he thought that enough.

Mr. Hoffman said the questions were put by the court in all cases which he recollected.

Judge Edwards said he had often been called upon to give his opinion on the nature and extent of a challenge, and in all his experience he had never found any other way in which the justifications of a juror could be tested but by challenging; and if these defendants wish to probe the juror, they can do it by questioning him under oath, or by producing witnes-

ses to speak as to his disqualification. This was the mode pointed out by the common law, and seemed to be fully adequate. It was the opinion of the court that no question should be put to the juror without the consent of the counsel on both sides, unless he was challenged.

Rufus Davenport was then called.

Oakley. We are reduced to the necessity of challenging.

Maxwell. On what ground?

Hoffman. On the ground of favour.

Ogden. By the course which we are now following, we are left in the dark as to the partiality or impartiality of the jurors: we cannot tell without challenging, whether or not they have formed opinions.

Judge Edwards. Neither does the law consider it necessary that a juror must be considered biassed or partial until he is shown to be so. The course I have pointed out must be followed.

The Court appointed Martin S. Wilkins, and Alderman Zabriskie, as triers, and they took their seats.

Oakley proceeded to examine the juror under oath.

Oakley. Have you read the report of the trial? A. I have read a portion of it.

Oakley. Have you formed an opinion as to the guilt or innocence of the defendants? A. I have, as to some of them.

Maxwell. Have you any ill-will or grudge against the defendants? A. No.

Oakley. Do you say that you have made up your opinion that some of the defendants are guilty? A. I have made up my opinion upon their conduct.

Judge Edwards. It is required that the witness answer the question.

Oakley. Please to state what your opinion is? A. It is unfavourable to some of the defendants.

Maxwell. But it would not prevent you from judging in this trial according to the testimony? A. By no means.

Judge Edwards. Are you governed by any prejudice. A. No.

Judge Edwards. Do you think you could render a verdict, notwithstanding what you have read, according to the evidence? A. Certainly—in any case I should do so, although at present unfavourable to the defendants.

Hoffman. But suppose the same evidence was given as before, how would you decide?

Judge Edwards would not permit the question. The question is, whether his mind is biassed; and the counsel have no right to suppose what the testimony may be.

Oakley said that the meaning of the word prejudice was the same as *prejudge*. If he had prejudged the testimony by what he had read or heard, then he was a prejudiced witness.

Maxwell. The question has been repeatedly decided. [He cited several cases, particularly one in an English court, where a juror had been proved to have made expressions unfavourable to one of the parties. It was there decided that it was necessary to show personal hostility, a settled prejudice, or a determination to find the party guilty: then the challenge would be good. But if the expression was made upon the strength of what the juror had heard, or if he had formed his opinion of the facts, as they had come under his own observation, and those expressions arose from opinion, and not from the ill will of

the juryman, he could not be challenged. If he had said, he would pass for one party according to what he had heard, then the challenge was not good. But if he says he will pass according to the knowledge he has of the facts, the challenge is not good. Expressions, to be the fair grounds of challenge, must be those of ill will.] These are the decisions of the English judges. Now, gentlemen, we find our own courts have followed up this principle. In the case of Durell vs. Morris, 8th Johns. 445, the defendants objected to a juror because he had said, that if reports were correct, the plaintiffs were right and the defendants wrong, but he was nevertheless admitted. As the juror, in that case, judged from what he had heard, so, in this case the juror speaks according to what he has read.

Hoffman. The question is not alone one of prejudice. The juror ought to come before the court like a blank sheet of paper—he must have no will, he must have no impressions, his mind must not be prepossessed. In support of this opinion, I shall cite Judge Iredell's opinion, in the case of Fry. In this case, the judge does not confine the question to prejudice, he extends it to the judgment and to impressions. The juror had said that all of the parties ought to be hung, and that Fry must be hung. Judge Iredell said he had formed a predeterminate opinion, and from whatever cause, he was an improper juror, because it was very hard to get rid of an impression which might mislead an honest man. The decision of Chief Justice Marshal, in the trial of Burr, was also applicable to this case. He decided that persons whose opinions were prepossessed were not proper jurors. It could not be said that a man was tried by an impartial jury, when the jurors had formed and expressed opinions upon his

guilt or innocence. The juror had said, that if a man acted as he had heard Colonel Burr did, he deserved to be hung. He had formed his opinion on rumour—he believed the rumour—but, on being questioned, whether, as a juryman, he should rely on that rumour, he answered No. Yet he was set aside by the court. Mr. H. put it to the triers, whether, a case which took place in England, scarcely three years since, should set aside such authorities as those drawn from the first talent in the United States.

Matthew L. Davis could not think that any man could be an impartial juror who had expressed an opinion upon evidence already given, and which must be gone over again. He wished to put the question to the witness whether he should give a verdict against the defendants, should the same evidence be given again.

Judge Edwards said he had already declared against the question. It had been decided often, that where a juror had sat on one case of conspiracy, and had rendered a verdict of guilty, he had been permitted to sit on the trial of another co-conspirator.

Mr. Maxwell then addressed the triers. If the doctrine of the defence was correct, we were reduced to a lamentable state of society; and he would venture to say that no atrocious crime could meet punishment as no man whose conduct had been made the subject of comment, or had been detailed in the newspapers, could have a fair trial by a jury of his country. Every day it happened that the papers teemed with details of the crimes of offenders; but juries still act, and why should they not? If you had read in a newspaper a statement of what was said to have happened in any particular case, would you be prevented from forming

a new opinion from more correct information, and when under the solemnity of an oath? Would every citizen be prevented from giving an honest verdict, because he had heard a previous statement? Could it be out of his power to judge of facts put before him in evidence, or to render a decision upon them? Or are the faculties of the human mind so limited, that men cannot distinguish between opinions formed on loose rumours, and those resulting from statements given under oath? They cannot anticipate the evidence, and therefore former opinions cannot be said to have been formed upon it. Was a man charged with a crime to be allowed to say, that because his conduct had been discussed in public, no jury could be found to give an unbiassed verdict on his trial? Should a man on this ground be allowed to say that none of his fellow-citizens, were competent to pass upon him? No position could be more unfounded. The case alluded to by the counsel, that of Burr, was a trial in which the life of an individual was involved; and it was not insisted upon by the counsel as the law would have allowed them to do, and if this was a case in which life was involved, I should be willing to waive my right, and allow the objection. But we have a case tried in Pennsylvania, that of Fry, for a conspiracy, in which the juror had said previously that "he was not safe at home, for these people who ought all to be hung, and that Fry must be hung." In this case Judge Iredell gave his opinion, in doing which he considered the declaration of the juror, not as a general expression on the merits of the case, but an expression of ill will. Judge Peters, associated with Judge Iredell, was not of the same opinion, and thought that the expression might have been made without implying hostility to-

wards the party, or that he would give a verdict in defiance of the evidence, but as the decision was essential to the safety of the prisoner, the district judge acquiesced. The case which he had already cited from eighth Johnson, 445, was very strongly in point. The juror there had no knowledge of the facts, but expressed his opinion from what he had heard in favour of the plaintiff and against the defendant. Now this is just a similar case; the juror now before you has read a report of the trial, and from that has formed his opinion; yet he says that he can as an honest man, pass on the defendants without fear of being biassed by any impressions he has previously received. In the case which I have cited, you have the authority of our supreme court confirming the English case which I previously referred to. (Mr. Maxwell here read the decision of Judge Hawkins.) On this occasion the juror had said that his opinion was not formed on any ill intention, but that he was acquainted with certain facts; and the judge decided that his opinion as to those facts was not a ground of challenge, as his impressions might be erroneous. The authority here given alludes to several other cases, in which the same ground was taken. These, gentlemen are the authorities of the law; and I ask you if this law ought not to be sustained. We are a reading people, and in no country are newspapers more extensively circulated. There is scarcely a person in the community who does not read them; there is scarcely a man who does not converse with his fellow citizens on the passing events in which all take an interest. There is a mass of intelligence abroad among the community, and to stay its circulation is as impossible as it would be deplorable. And are you to say that, because opinions have

been formed, an honest man will set aside his oath and be guided by former impressions? It cannot be believed! You all remember the case of Johnson the murderer, not a person could have been found in the community who had not formed and expressed some opinion. The enormity of the crime had produced a great degree of excitement, and it was apprehended that a jury could not be obtained. But the question then put to the jurors was, whether they had any personal ill will to the prisoner, and in this manner a jury was qualified. I refer to this, gentlemen, as an example, and I refer it to your good sense. Although the crime committed was one to call forth the feelings of every man in the community, yet you must remember that the oaths of the jury are still a barrier against the assaults of their prejudices or passions: Those oaths are to be considered as sufficient pledges that they will do their duty if they entertain no ill will against him upon whom they are to pass. These, gentlemen, are my views of the subject, and I think they are sanctioned by authority, by practice, and good sense.

D. B. Ogden. I come here to claim the constitutional right of my clients; the right to be tried by an impartial jury; and you are to decide according to the evidence before you, whether these jurors can be impartial or not. What is an impartial jury? Can it consist of men who have already made up their opinions? No! They must be unbiassed and impartial, whose minds are open to conviction and to the truth. The counsel on the other side, has cited many cases to show that men who have already formed opinions are competent jurors. But, I pledge myself, if I understand the English language, to show that these cases are against him. In the case referred to, in

regard to the expression of opinions by jurors, the decision of an English judge has been cited, in which it is declared, that expressions must be hostile, or show that a preconceived opinion has been formed; and gentlemen, is it not the doctrine of common sense, that if the judgment has been previously made up, it will affect the decision of the juryman when he comes to render his verdict? Can you tell how far opinion may mislead him, even without his own knowledge? He may think, honestly, that he is delivering an impartial decision, and, at the same time, be under the influence of impressions, of a nature, to render such a decision impossible. What does Chief Justice Marshal say? The District Attorney has not alluded to his decision, because it is unanswerable. He says, that a jury should be formed of men without partiality; but if it is not possible, from circumstances, to obtain an entirely impartial jury, then, it is the duty of the court to obtain as great a portion of impartiality as in its power. But it cannot be argued, that a man who has said that the defendants ought to be convicted, is an impartial man. If he has made up such an opinion without being acquainted with the facts, so much the worse. [Mr. Ogden then cited the case of the juror on the trial of Burr, who expressed an opinion founded on public rumour.] Now, gentlemen, the juror in the present case has not decided upon rumour—he has formed an opinion upon the detailed evidence published in a newspaper, a far more reliable source of information than a mere flying report: and if Chief Justice Marshal shall decide against an expression of opinion founded on rumour, surely this expression, founded on the published report, is a legitimate ground of challenge, and this juror necessarily cannot be com-

petent. In Chitty's Criminal Law, it is laid down, that in challenging a juror, it is necessary to determine whether he is liable to be biassed by any circumstance: the question is said to be, whether the juror is entirely indifferent to the result or to the fate of the parties. Now this juror is not indifferent, for he declares that his mind has been made up on the trial in question, and, therefore, the law says he is not competent to render an unbiassed verdict, because he may, unconsciously, be swayed to one side or the other. In the case of Goodwin, at which Mr. Colden, the then Mayor of this city, presided, the Mayor pronounced in favour of a challenge of a juror who had expressed an opinion founded upon rumour only, and the juror was declared incompetent. The Mayor considered that case the same as Fries. In 1st Cohen's Reports, page 35, it is stated, as a principle of law, that if it appears probable that the juror be biassed, the question is to be decided according to the strength of the probability. Is it not to be supposed, in a course of plain reasoning, that any man who has formed an opinion, by reading a former trial, will probably decide according to that opinion? The doctrine of the District Attorney strikes me with astonishment. If it were to be established as a general rule, its effects would be most pernicious. An artful public prosecutor would then have nothing to do, but to cause to be written, the most inflammatory paragraphs in the news papers, against the person whom he might have determined to sacrifice, and then he could come into court and say, you shall be tried by a jury of men who shall have passed already upon you in their own minds. I speak with all due respect of the present public prosecutor—he is above suspicion: but if ever a corrupt

incumbent should fill his station, I repeat, that the effect of such a doctrine as the District Attorney has advanced, would be dangerous in the extreme. What schemes of private malice such a man might plan and perpetrate, cannot easily be foreseen. Gentlemen, we are by no means forced to form this jury of men who have already expressed opinions on the guilt or innocence of the defendants. An impartial jury can be obtained; and if not in this city or county, let a jury from another county be had; but never let it be said that these defendants could not find, in this court, their constitutional privilege to be tried by a fair and impartial jury, or that the blessings of a free press should be so perverted as to deprive the citizen of his birthright.

Barker said, that he understood the juror to have said, that he had made up a conclusive opinion as to the guilt of the defendants.

Maxwell. The juror did not make such a declaration. He said he had not decided in such a manner as to prevent his giving a judgment according to the evidence.

Barker. I am not mistaken. Through the whole of the former trial I did not make a single incorrect statement, and I am right in the present instance. You are sensible of the power of opinions when once formed. Opinion is a tyrant over the minds of all human beings. I may say that we are its vassals; and how dangerous is it to admit upon the jury a person who may fall into this common submission to preconceived opinions. It has been said that this was not a trial for life, and that a distinction should be made between such a trial and this. Now, gentlemen triers, I do say that it is more important than a trial for life—for what

is life worth if reputation is destroyed, and the character branded with infamy? As to an impartial jury, I have no doubt one might be obtained. There are not three men in the whole panel to whom I have any objection. But the constitution of the United States guarantees to every citizen accused of an offence, the right to be tried by an *impartial* jury. Now, gentlemen triers, it is totally beyond my powers of comprehension to reconcile the words of the juror, who said that he had made up a conclusive opinion that some of the defendants were guilty, with the meaning of the word *impartial*. I, however, trust implicitly in your justice and discrimination. All I ask is, that you will do by me, as you would wish that I should do by you: and I put the question to you, whether you would willingly be passed upon by a juror who had already declared that his opinion was made up against you?

Judge Edwards charged the Triers. This is a case of great importance, and the result of your deliberation is very important, as it may tend to regulate the opinion of the community as to the law on the subject submitted to you. The terms of your oath are to try whether the juror stands indifferent between the parties. Impartiality is essential. It is what the law seeks for most sedulously in bringing together the tribunals for the dispensation of justice. The end is of great moment, for to create a tribunal to pass on a fellow-citizen would be a mockery were it to be actuated by other motives than the award of justice. The law on the formation of juries is of great antiquity, going back as far as the period when the English statues were written in the Norman language; and we find the law, even at that remote age laid down in the same manner as within a few years. The rule which I am

about to lay down is the same which I have often had occasion to offer in other cases. The trial of Johnson, which has already been referred to, will offer an apt illustration to the case. On that occasion the crime was so diabolical, and its publicity so great, that it was feared no person could be found who had not heard the facts, and already expressed an opinion upon the subject. It struck me at that time, that if the publicity of a crime was to disqualify jurors from acting upon it, a man was only to do some deed so shocking as to raise general comment and excitement, to make it impossible to find a juryman who had not expressed an opinion, and consequently to shield the culprit from being tried at all. But no rule can be correct which would obstruct the course of justice, or allow the guilty to evade a deserved punishment. The law on this subject is grounded in reason; and so well grounded, as to have stood the test of almost countless ages. Another case which seems to me proper to mention to you, is that of Desha. We have been informed, through the newspapers, that a jury could not be obtained, and consequently, that he has not been tried up to this period. Two or three times the trial has gone off, from the impracticability of obtaining a jury. I mention this only to take occasion to state, that the publicity of the facts is no bar to the admission of jurors. Intelligence can be no disqualification, as is amply proved by the law and by practice. It was the ancient usage to summon jurors from the vicinage in which an offence was committed, and it is still the practice; and this practice seems to have been founded on the supposition, that by doing so, the jurors would be better acquainted with the parties and with the facts. As to the expression of opinions, our Supreme Court has laid down a rule. Where persons

expressed opinions on what they had heard, the court decided that it did not disqualify them from serving as jurors, because such opinions are hypothetical and not positive. If then, gentlemen, the juror meant to say that his opinion was founded on facts stated in the newspapers; still if when sworn on the jury he should be able to come to a decision on the evidence brought before him, he would be a good and competent juror. The questions to be asked are: Is his mind clear from infection? Is he impartial? Can he give an unbiassed decision on the evidence laid before him? If he cannot lay aside an opinion previously formed, and judge only of the facts sworn to by witnesses: or if his mind is so impressed that nothing can change it, he is an incompetent juror. The decision as to his competency or incompetency is now submitted to you.

The triers then retired a few moments, and on their return declared the challenge not true, and Rufus Davenport competent. He was then sworn in.

Andrew S. Norwood was called and challenged.

Mr. Oakley said he wished the challenge and testimony of the juror put on record.

After considerable conversation, the Judge said that the ground of objection might be put on record: but, as to sitting by the hour to minute the answers of the juror he should not do it.

Selden. I challenge the juror on general grounds to be decided by the court.—(To the juror.) Have you made up your mind in relation to the persons now on trial? A. Yes.

Selden. On what ground? A. I made up my mind perfectly on the testimony given during the late trial, the whole of which I heard, that the defendants were guilty.

Maxwell. Have you any partiality? A. No, neither jointly nor separately. I have no bias for or against them. If the same testimony should be given in the present trial as in the former, I should most undoubtedly decide that they were guilty. If not, my opinion would be formed according to the evidence.

Maxwell. Do you feel competent to give an unbiassed opinion? A. Yes, according to my oath and according to the testimony.

Judge Edwards. Supposing that the evidence was variant, should you accommodate your decision to it? A. I should according to the testimony, be it what it might.

Hoffman. Do you feel yourself entirely impartial? A. Yes, altogether.

The Judge said it was the unanimous opinion of the Court that Mr. Norwood was a competent Juror. The only distinction between his case and that of the Juror already sworn is, that one read and the other heard the testimony given on the late trial.

The Juror was then sworn in.

Oakley said he wished the testimony might be entered on the record. He was continuing to speak, when he was stopped by Judge Edwards, who observed that it was now no time for argument, the matter in hand having been decided.

Oakley. If I may be allowed to speak I will explain.

Judge Edwards. There is no restriction on speech, but the point is disposed of, and I think there is now no room for discussion.

Oakley. If I may be allowed to speak I will explain. I do not wish to discuss a settled point, but I again request that a note may be entered of this Juror's testimony to be referred to hereafter.

Judge Edwards. I wish to know why the phrase "if I may be permitted to speak" was used, and whether any disrespect is meant by it to the court. I am not aware that decent speech has ever been prohibited in this court.

Oakley. If I know myself I am not capable of using words designed to convey disrespect to the court; and in this instance it was farthest from my mind.

The Judge then read his minutes of Mr. Norwood's testimony.

Barker. I misunderstood the challenge. I understood that after the decision of the court on the general challenge, the defendants had a right to challenge in a specific manner. I submit to the court, whether I am allowed to challenge.

Maxwell. This is a curious proceeding. If the gentleman wishes to obstruct public business, he might as well declare it.

Barker. I challenge the Juror on the ground of favour.

Judge Edwards. The challenge is not available. The rule of law is well established, that all challenges must be made before the juror is sworn.

Rider Throckmorton called, and challenged on account of an error in his name, which is Reed R. Throckmorton—discharged.

Samuel Kip, jun. called. On being questioned by Oakley, he said he had formed an opinion conclusively from reading the last trial. He feared his opinions would bias his judgment.

Radcliffe. What did you say to me yesterday on this subject? A. I said, in a loose manner, that the defendant's ought to be hung first and tried afterwards; not that I think they ought to be hung, or wish

that one of them should be. It was said jocularly, as expressive of my belief in their guilt.

Radcliffe. I only asked the question to show the bias of the juror's mind.

The court admitted the challenge.

Benjamin B. Huntington called, and questioned by Selden. Said he was interested in the Fulton Bank, and had lost money by Life and Fire bonds, and did not feel himself competent to decide impartially as a juror. The challenge was admitted.

Silas Howell called, and questioned by Oakley. Had formed no opinion, had no prejudice, and had only looked at the reported trial casually. He was sworn.

Isaac Collins called, and sworn, not being challenged.

John Lowry called, and challenged by Oakley. Had formed an opinion that the defendants were guilty, from conversations he had had with the jurymen on the other trial. He doubted whether he was competent to give an impartial verdict—should be afraid to try it. The challenge was admitted.

Victor B. Waldron called, and challenged by Hoffman. Heard part of the testimony on the former trial, and had formed an opinion upon it.

Maxwell. Could you, nevertheless, render a verdict without bias or ill-will? A. I would not allow previous opinion to bias my decision upon the evidence as a juror. Whatever I now think, my mind would be open to conviction, if I was under erroneous impressions.

The Court declared the challenge not good, and the juror was sworn.

Wm. R. Cook was called, and challenged by Hoffman. My opinion is unfavourable to the defendants.

Maxwell. Have you any ill will toward them? A. No. I know nothing of them but what I have read and heard. I was present during part of the trial. Challenge set aside, the juror was sworn.

John Fream called, was not challenged, but said that he did not think he was competent.

Maxwell. On what ground? A. Before the bill of indictment was found I considered some of the defendants as dishonest men, and I fear I should be inclined against them. I should, however, endeavour to give an honest verdict.

Maxwell. I allow a challenge to be made by any of the parties.

Barker. I know Mr. Fream to be an honest man, and if he has formed an erroneous opinion, I believe he will not be prevented from rectifying that opinion and giving a just decision.

Matthew L. Davis. I have also every confidence in Mr. Fream's honesty, but on his own declaration I shall challenge him.

Barker said he wished Mr. F. retained, and Mr. Davis withdrew his challenge.

William M. Willet called, challenged, and questioned by Hoffman. Had formed his opinion against some of the parties. He might be biassed by what he had heard and read.

Maxwell. Have you any grudge against them? A. No very great grudge, but I have some.

The challenge was admitted.

Paul R. Jehovitch called, explained that his name was printed wrong on the panel. It was there put down Powles instead of Paul.

Barker. I am informed that it is the same in the Dutch language.

Oakley. I think Mr. Barker is right.

Considerable time was spent in questioning persons acquainted with Dutch. Opinions were rather contradictory: at last Alderman Zabriskie was sworn, and testified that in the Dutch dialect—which he spoke, but did not read—the name was often pronounced as *Powles* was spelt. The name of the Apostle Paul was pronounced similarly.

The Court was satisfied that it was the same name, and Mr. Jehovitch was challenged by Mr. Maxwell. I should think that the opinion I have formed, would weigh very forcibly, unless new evidence should be produced. I should be much embarrassed if the same testimony was given as on the former trial. The challenge was withdrawn by Maxwell, and the juror was sworn.

Abraham P. Mead called, and challenged by Oakley. I have formed an opinion unfavourable to the defendants from reading the testimony. If the evidence should be the same I think I should be for convicting them. I have no grudge against them, and feel competent to express an opinion according to evidence. Challenge not admitted, and the juror sworn.

Robert P. Laidley, challenged by Barker. I have formed an opinion against the defendants. I do not feel confident that I should give an impartial verdict. The challenge was admitted.

—— Knapp, challenged and questioned by Selden. I think, from reading the trial, that all the defendants are guilty. I have no other bias. The challenge was admitted.

Robert D. Weeks called. Challenged by Oakley. I am not now a stockholder in the Fulton Bank. I

was formerly, but not at the time of the transactions with which the defendants are charged. I have formed an opinion that transactions of a highly improper nature have been effected: but I was not present at the former trial, and cannot pretend to say who were the perpetrators. I have read the reported trial.

By Selden. Are you persuaded of the guilt or innocence of the defendants? A. I am convinced that improper acts have been done, and that these individuals were connected with them, but I cannot take it upon myself to say that they are guilty of the charges of the indictment. I have no bias against any one of them.

The Court decided that Mr. Weeks was competent, and he was sworn in.

George Steele called and challenged. Questioned by Oakley. I am of opinion that the defendants are guilty. If the evidence is the same as before, I should convict them.

Barker. Can you render no impartial verdict? A. I do not think I could altogether. The challenge was admitted.

Abraham Hart, challenged and questioned by Barker. I have no prejudice against any one, and could render an honest verdict. I have formed an opinion. The juror was sworn.

Aaron Heath. I have not formed an opinion and never expressed one. Sworn.

The Jury being thus completed, the Court adjourned.

Thursday, November 23d, 1826.

Mr. Barker opened his defence with the following remarks :—

Gentlemen of the Jury,—The District Attorney congratulated the Court and Jury, in his opening, on the prospect of a more summary trial than before, and has prosecuted it conformable to that intimation; and I have endeavoured to be influenced by the same consideration for all parties, and in furtherance of that object, and because I shall, of necessity, in my closing remarks, have great occasion to claim your indulgence, and to trespass on your patience, I shall in this stage of the proceedings, confine myself to a very few remarks.

[Turning to the District Attorney, he requested to see the *wooden daggers* furnished by Alderman Rathbone, describing the papers alluded to. Two or three were furnished. I want another of a deeper hue than either, said Mr. Barker; when another was furnished.] This is it on which I have written a memorandum, which is as pure and harmless as the act of furnishing it is vile. It is a contract, in the hand writing of Alderman Rathbone, and dated the 10th of May. It sets forth, that Mr. Eckford had borrowed from Messrs. Spencer and Brown 2000 shares Fulton Bank stock, in exchange for 2,500 shares stock in the Morris Canal and Banking Company; promising to exchange back, at his option, at any time prior to the 1st of March next. This contract was signed, for H. E., W. P. R.; and on its back is a memorandum in my hand writing, in these words, " as

fast and in such proportions as I deliver the Fulton Bank stock."

Nothing can be more harmless, more innocent than every part of the transaction, so far as described in this agreement and in this memorandum—it is a simple exchange of stock, an every day transaction. Nobody has, nobody will dare to say that it was wrong: but if the stock had been fraudulently obtained, or if the certificates were false, all parties to the transaction who knew of such frauds, or either of them, would be guilty. Now, as I knew nothing of either, and had not, at the time, the slightest reason to suspect that any thing was wrong, (and there is not a word in the agreement indicating any wrong) there is no wrong on my part, even if I had been a party to the return of the Fulton stock. Not so with Rathbone; he was a director in both banks; he procured the stock from the Morris Canal, he knew whether or not it had been paid for, and if the certificates were false, he knew it. The memorandum on the back has no date, nor is the paper brought home to me at any particular period. It may have been written after the indictment, and even since the last trial, for aught that appears in evidence before you. The question that this memorandum presents, is, was the memorandum to form a part of the within contract, or is it a separate contract, intended to be signed by some other person? The District Attorney read the signature to the agreement, Henry Eckford and William P. Rathbone, and not for Henry Eckford, William P. Rathbone, as he should have done, which makes the memorandum "I," being written in the singular, appear not to belong to the contract; and in the absence of all proof, my hand writing is to be considered as indicating a separate

condition on my part, connecting me with the whole transaction. I know the District Attorney could not have intended such a deception, such a gross fraud; he could not have perceived its tendency, or he would not have thus exposed himself; it was his error in reading—yet it might have been to me a most fatal error, equally injurious as if it had been intended, and if I had not had the capacity or good fortune to have detected it, I must have suffered.

I will now, Gentlemen of the Jury, unveil to your view a nefarious attempt to sacrifice an unoffending man. In the absence of Mr. Eckford, Mr. Rathbone called at the office of the Mercantile Insurance Company, and presented to me this paper, drawn up by his own hand, dated and signed before I saw it, but how long after its date I do not recollect, and asked, as the friend of Mr. Eckford, if its conditions were clearly expressed. I suggested a slight alteration. He requested me to reduce to writing the suggested alterations. Not suspecting traps to be setting for me, I did so, on the back of the agreement. My son was present. Mr. Rathbone requested him to make a fair copy, incorporating the memorandum with the agreement. He did so, and Mr. Rathbone took both papers with him from the office, since which I have not seen or heard of either, until they were produced by the District Attorney, which circumstance, when taken in connection with Mr. Rathbone's being let off, forces on my mind the irresistible conclusion, that he has furnished it for the purpose of fixing on me a crime, of which he knew, that I, at least, was not guilty. If roguery there be in the transaction, he is the only rogue among us. W. P. Rathbone, I mean, gentlemen, that man sitting there, (turning and pointing at Rath-

bone;) to describe the enormity of whose conduct, requires powers far beyond my capacity, and the little I can do, in that way, shall be preserved for my closing remarks. A most painful consequence of this paper, is the necessity it puts on a father to call his own child as a witness in his cause; an alternative I did hope to have been saved from. But the cup of my mortification does not yet seem to be considered full by the District Attorney, and I hope the world will consider the necessity of the case a sufficient justification—they are interested that the true character should be known of the use attempted to be made of these papers. Another of these notable papers is a very rough memorandum, in the hand writing of Brown, Spencer, Rathbone, and myself, which seems to have reference to a negotiation for a loan of $100,000, to support the Hudson and the United States Lombard Companies, which took place a few days before their failure; half of which it was expected would be furnished by the Fulton Bank, and the other half by Messrs. Eckford and Barker. There was nothing on this paper to connect Mr. Eckford with this transaction, except the hand writing of Mr. Rathbone, who was, *at that time*, the partner of Mr. Eckford; and the only thing to connect Mr. Barker with it, was the last memorandum on the paper, limiting the loan to $1000 per day—which was surely a prudent precaution, as, if the intended object failed, the obligation to loan would cease; and if the object was obtained, the parties would benefit so much by their collections during the hundred days, that it would compensate them for their great exertions to raise the $100,000. But so far from the companies meeting their payments as long as Napoleon reigned after his return from Elba, they both failed

within one week; and although they got more than $17,000 of the money, ten thousand times has it been alleged, to my prejudice, that they would not have failed if I had performed my promise. I consider the production of this supposed dagger, although intended for my destruction, a most fortunate feature in the plot, as it frees me, most triumphantly, from one charge—and, although the last I knew of this paper, it was in the hands of Mr. Brown, I am not prepared to believe that he furnished it; and nothing can be more honorable to Messrs. Spencer and Brown, than the part this negociation locates on them. The whole object, scope, and tendency, is to borrow money on the best securities they held, for the use of the companies under their management. The next in order, is a memorandum in my hand writing, purporting to be a contract, dated the 21st day of July, written for Messrs. Brown and Spencer to sign, for the settlement of the contract of sixty-one thousand dollars Fulton bank stock, which was not agreed to or signed by either. The last I knew of this paper, it was in their hands. It is perfectly harmless, except as another evidence of the guilty conspiracy to destroy me. And now we come to the fourth and last of these weapons of destruction: it is a plain contract for the purchase and sale of six hundred and ten shares of Fulton Bank stock, dated the 21st of January, which stock I held at the time. What possible use of this contract, the District Attorney intends to make, I cannot imagine, and therefore will not remark on it. The last I knew of this paper, it was in the hands of Mr. Spencer. The parties now on trial, can, and I trust will, satisfactorily explain how they lost possession of them. At present, I am inclined to believe that Rathbone either furnished, or

was instrumental in furnishing them all: perhaps he borrowed them for the purpose of negotiating for the exoneration of a greater number of the defendants; but as the District Attorney could not have found in them sufficient for their ransom, Rathbone, if my conjecture is right, converted the whole to save himself. At these contrivances, as at all my enemies, I boldly hurl defiance, knowing that all the contrivances in the world cannot convert innocence into guilt. Now, Mr. District Attorney, if you have any more papers that bear the mark of the finger of Jacob, let him have them, that he may dispose of the whole pack at the same time.

Gentlemen of the Jury, the District Attorney took particular pains, in his opening speech, to draw down public indignation upon me. It was for the public and not you, as he has not followed up his most aggravated allegations with a particle of proof. For instance, he stated that within six months immediately preceding the failure of the Life and Fire Insurance Company, I had, as their agent, palmed off, on the community their bonds to the amount of $300,000, knowing them to be bad: thus leading every bond holder to suppose I had defrauded him of their amount, when it has been proved, over and over again, that I never sold a bond for the company—that I only sold $10,000 worth, and that they belonged to the Mercantile and Western Insurance Companies, and not to me or to the Life and Fire Company, and that of the person to whom I sold them I had purchased a greater amount, and of others to a vast amount.

Not even an offer, on my part, to sell has been proved, although he has unintentionally proved that I made vast purchases. All this was proved on the

former trial, and not any new proof has been adduced on this point. The District Attorney traduced me most cruelly on the former trial, for all which I can excuse him. He had been deceived into a belief that I was guilty; and in doing what he might have thought was his professional duty to demonstrate that guilt, he allowed his zeal to carry him quite too far. I had hoped that he had emptied all his vials of wrath to their very dregs on my devoted head; but I was much mistaken. He has wounded me still deeper; and his last speech has been spread in the columns of the daily papers, and to my prejudice. I have been indicted for a conspiracy—this term indicates secrecy. Did you ever, gentlemen of the jury, hear of a conspiracy, without hearing also of its being suspected, discovered, or betrayed? You have often heard of the detection of a conspiracy against the state, against the church, or for some other extraordinary or violent purpose; but you never heard of one without there having been, at least, an attempt to keep it a secret. And now, allow me to call your attention to my conduct in all the business connected with the various subjects of this inquiry, when you will perceive that every part and particle of it has been conducted openly and without the least reserve or secrecy.

Is it not fair and reasonable to presume that the District Attorney considers himself totally destitute of all evidence of crime, by his resorting to such trifling circumstances; his collecting together these straws and feathers, lighter even than air, from which he wishes you to infer guilt. On the last trial he held me answerable to prove that I was absent from the city in the month of June. It was, though by accident, proved, and I suppose sufficiently so; I however, did

refuse to send for witnesses on that point; but my proud spirit has been humbled, and although a free citizen, in a free country, I feel compelled to prove that I went to Nantucket to visit an aged mother.— Had I not have witnessed the fact, I never could have believed, that any citizen would have been held answerable to prove whether he remained at home or went abroad, or how long he was absent; but I have determined to humble myself by furnishing the proof, and witnesses to your entire satisfaction shall be called. The commission charged on my account may possibly be made a fruitful source of complaint, although only a common commercial commission of two and half per cent. More is sometimes charged on commercial transactions, say five per cent; and in the case of the Greek ships I believe ten per cent, whereas a broker's commission would only be a quarter, perhaps a half, and at most, not over one per cent. Therefore, for the purpose of establishing my charge to be a fraud, he has caused me to be indicted by the denomination and character, or name, of a broker. Now, gentlemen of the jury, I am not, and never was a stock broker, and besides the charge is only conditional. The circumstances which led to it are as follows: Mr. Eckford applied to me to sell and hypothecate the stock, a part each, and to carry on sundry negociations connected with raising money on the stock. He wished to stipulate for an adequate compensation. I declined, and he promised to see me paid when it was over. You have seen with what fidelity and success I carried on all these negociations. The object for which I embarked was lost in the failure of the Company, and it then became a mere matter of interest. I therefore placed in the account rendered to the receivers, a

commercial commission of two and a half per cent, which I think richly earned; but observe, gentlemen, the remark I made when I delivered the account. Mr. Hoffman one of the receivers, will tell you, when called as a witness, that I stated the charge was only intended to lift the subject up to the view of the Chancellor, explaining at the same time, the terms on which I had embarked, and that I considered the Chancellor, when he should pass on the account, to be at perfect liberty to reduce or expunge the charge, if he should think proper to do so, and that I should not insist on any pay. The science of finance, as I have often stated, is difficult to be understood, particularly by young and inexperienced persons, in illustration of which, I will state mistakes made by young Mr. St. John, from the Morris Canal. I do not wish to criminate him or impeach his testimony. I do not believe he meant to swear false; but he did swear most heedlessly. I will prove that he swore on the former trial, that Mr. Vermilyea sent him with the five thousand dollars to Mr. Barker, that he went to the Dutchess Insurance Company, where he saw Mr. Barker and offered him the money, that Mr. Barker did not take it, but pointed out Mr. Halleck as the proper person to receive it, to whom it was delivered. Also that the $10,000 was returned to the Morris Canal, that he received it—$8600 in their own bills and the residue in the bills of the banks of New-York—and on this trial, you, gentlemen of the jury, have heard him swear, that when he went with the aforesaid $5000, Mr. Barker was not in the Dutchess Insurance Company, that he saw Mr. Halleck, gave him the money, who informed him that it was all right; that he did not at that time know Mr. Barker, saw a gentleman pass out at the door when he

(St. John) went in, whom he afterwards was informed was Mr. Barker, and when the money was returned. the witness received only a part of it, he believes $7000, in Morris Canal notes, he however admitted in the cross-examination that the whole $10,000 had been paid, which he learnt from the officers of the Morris Canal, but still persisted in saying he did not know it of his own knowledge.

On the last trial I did not call witnesses to prove a negative, contenting myself with knowing that the District Attorney had proved nothing against me; and difficult as it is, I shall attempt in this case to prove a negative. You shall hear what Mr. Cox can say on the subject; and as relates to my confidence in the Life and Fire Insurance Company, I, in common with all the witnesses that have been examined, had the fullest confidence, and I think all the proof supports this declaration. But as it may be urged that all these operations were for account of the companies in which I was an officer, I will tell the operations I had in them on my own account. I induced my friends Israel Corse & Son, to join me in raising funds from the United States Fire Insurance Company, by the purchase of United States Bank stock (which amount was invested in Life and Fire bonds on joint account) which bonds we held until near the time of the failure, when for the purpose of enabling the company to go on, they paid us $20,000 of them in bond and mortgage, the others remain unsettled, and although the Mercantile and Western had security, these bonds were not secured except until they were paid by the said bond and mortgage.

Gentlemen of the Jury, my connection with the Mercantile Insurance Company, the Western Insurance Company, and the Dutchess County Insurance Company is made the ground of reproach. The Mercan-

tile allows me a salary of $1500 per annum, with which, and some trifling stock speculations on my own account, I support my family. The Dutchess allows me $2000 per annum, and the Secretary exchanges my bank notes at par, to an equal amount for the holders who apply, paying them to me for salary. I have not yet received the last quarter's salary, but believe he has on hand a sufficient amount thus exchanged to pay it: the previous quarter's salary was paid wholly in Exchange bank notes. With this company's removal to New-York, I had no part or lot; it was brought here by others, strangers to me, and established in business, but was unable to get on without aid, and to Jacob Barker, as is usual in such cases, application was made: he took an interest of only $500 in the stock, and became an officer in the company, and served it faithfully, and with success, for fourteen months, for which the directors allowed him only $1000; since then I have received $2000 per annum.

The Western Insurance Company allow me $2000 per annum, and pay me by the burning up of that amount of Exchange bank notes, which they had taken at par, in part payment of their stock, which the holders of those notes subscribed, for the purpose of getting them thus paid; and I am bound to labor for the said company in a similar way, so long as they have an Exchange bank note to pay me with, beyond which I have no interest in the company, except that imposed by necessity, and should gladly quit it to-morrow, if not restrained by other considerations than that of profit.

The active, or executive part of the business, of these companies, has been principally done under my immediate care; and if there is any wrong, I am quite

willing to bear the whole blame, and to answer therefor, even at your hands, whether you find it in the bill of indictment or not. These companies have been preserved whole, sound, and prosperous, while half the monied institutions of your city and of Europe, have fallen under the general calamity which seems to have devastated the commercial and financial world the past year. Many similar institutions have had their capitals and effects wasted and squandered, or applied to the speculative purposes of the officers, whose duty it was to have protected the same—some fifty or a hundred of these officers, whose duty it is to render an account of what, at least, may be considered their unfortunate stewardship—some fifty or a hundred, I say, have been indicted, the bills filed away, and remain neglected on the dusty shelves of the District Attorney, while I, the last man indicted, and who have thus preserved the companies intrusted to my care, and to the entire satisfaction of the most respectable board of directors the city could afford, am the first to be tried, and tried again. The public are said to have run mad, and that they cannot be appeased by any other victim than Jacob Barker, guilty or innocent. If this was true, would you yield to such considerations? Would you give up an innocent man a sacrifice for the crimes of the guilty, and allow those guilty, thus to draw off public attention from the real offenders? No, I know you would not. But it is not so; there is no such prejudice, no such feeling abroad; the public have not run mad; the public do not want any victim; but they do wish to see the guilty ferreted out from their lurking places, and punished according to the law and the evidence in the case; and this is what I also want, and this I demand at your hands.

Friday, November 24th, 1826.

At the close of the preceding speech, all the parties proceeded to furnish their testimony. That being closed, several of the Counsel summed up the cause in behalf of their clients—after which Mr. Barker occupied the court for six hours in making the following remarks:

Gentlemen of the Jury—It was said by a former president of the United States, in his message to Congress, that we had fallen on evil times. It is very common for men surrounded with difficulty to think their own case harder than others; in this common feeling I think I may be allowed to participate at this time. The disadvantages under which I now appear before you are so manifest, and the great difficuly in so regulating my course as to do justice to myself, and not injure the cause of the other defendants, embarrasses me beyond measure. Next to my solicitude to demonstrate my entire innocence is my desire to avoid giving cause for any one to think I am regardless of the feelings or character of any person, and particularly so of those persons who have been denominated my companions in misfortune, although most of them have, by their own acts, or that of their counsel, manifested a perfect willingness to give me up an innocent victim to public prejudice in the hope of escaping themselves, or at least of mixing me up in their concerns, with which they know I have had no part or lot, and in the hope of making the world believe their conduct had been equally praiseworthy with mine. There is, how-

ever, one of the individuals in this indictment, not now on trial, towards whom I have no kind feelings left, insomuch that I am afraid I may be led into error. I have thrown off all restraint on my angry passions, and although I came into court this day an unoffending man, I am very much afraid that I shall not leave it without doing some wrong; the provocation is so excessive that my remarks in relation to William P. Rathbone cannot be regulated by moderation or perhaps sound discretion.

When I addressed you at the opening of my defence, I lifted up the curtain and gave you a slight view of the nefarious conduct of that consummate villain: I will now rend the curtain into so many pieces that no one will be large enough to know its fellow. It is not only me that he has attempted to stab, it is his late partner, Henry Eckford, at whose fair fame he has also levelled his venomed shafts. Mr. Eckford's character was as pure and spotless as the mountain snow, until this monster trampled on it with his unholy feet, and blackened it with his own pollution, at the very moment this man's patron had, by his generosity, his kindness, and his too confiding disposition, warmed him into notice, and given him the little consequence he has had in this deeply injured community.

It is in proof that he was a lobby member, hanging on the skirts and over-awing the legislature and that he procured the charter of the Fulton Bank, but by what means we have not, on this trial been able to prove, although a pretty clear inference is to be drawn, from what has come out, that it was by bribery and corruption. He returns with the fruits of his iniquity, and his friend and relation, Mr. Cheesbrough, one of the commissioners appointed for the distribution of the

stock, allows him to subscribe for a half a million of the stock, being greatly more than the half of the bank, after deducting that part allotted to the late vice-president Tompkins, and that, too, without paying a single dollar, and this stock is allowed by Mr. Cheesbrough to control all the elections of directors, although to this hour not a single dollar has been paid on it by the said William P. Rathbone. Not content with defrauding the community out of a fair distribution of the stock, he defrauds them by giving out that Mr. Eckford owned half the bank; and, to give currency to this story, he subscribes therefor as the attorney of Mr. Eckford.

As soon as Mr. Eckford heard of the liberty he had taken with his name, he declined having any thing to do with the dirty work, and throws back the stock on the commissioners. Observe, gentlemen, he does not give it to this Rathbone—he places it back where the legislature originally placed it, leaving the responsibility of its distribution with the legally constituted authorities, of whom Mr. Cheesbrough was one; and Mr. Cheesbrough insidiously told you on his oath, that when he wished to hear from Rathbone at Albany pending the application for the charter, he went to Mr. Eckford. The next move this man makes was to borrow the name of John M'Dougal Lawrence, Esq. and Mr. Vermilyea, and to these three names do these commissioners give the bank, but wholly for account of Rathbone, denying to the neighborhood and to the community nearly all participation therein, although they were ready with money in hand to have taken the stock and paid the whole cash therefor. Soon after this he sells the control of the bank for a bonus of $75,000 to Messrs. Spencer and Brown, taking his pay

in Hudson bonds, to secure which, and to get up the notes given by himself, Lawrence and Vermilyea for the stock, to the amount of about $400,000, may you ascribe the various manœuvres of this man, and by basely surrendering to the District Attorney papers, scraps, loose memorandums, and the like, he hopes to induce you to believe that others have been guilty of crimes which he alone perpetrated.

Gentlemen of the Jury, I am sorry to take up so much of your time with so worthless an object as William P. Rathbone, who, I may with truth say, in the language of Mr. Randolph, will not, when taken, be game worth the ammunition expended in the chase. But he is an Alderman, and has drawn into his toils many other honorable members of this court. I believe the names have been implicated in these transactions of a majority of the whole fifteen members who have a right to sit in judgment on your verdict, if you should pass one against me, which God forbid. I do not say these things from any disrespect for this honorable court. I know they must feel indignant at the conduct of this miserable creature, and be the first to endeavour to wipe away the stain he has brought on the whole city: they will feel as the two young Russian nobles felt when their much beloved sister dishonored their family by an intrigue with a foreign minister: they put her, with their own hands, instantly to death; and the good people of this city, who have wrapped their mantle about this man's head, by honoring him with a seat as member of the common council, as well as of this and of other courts, will drive him from their presence. He will not be permitted to live where "trees bear tar or birds carry feathers." Although I have taken up much of your time with this doleful subject, I shall have

occasion to advert to it throughout my defence, as this Iago appears in almost every act against which I am called here to defend myself. I will, therefore, proceed briefly to notice the law and the circumstances under which you were impanneled.

In the course of the examination, the District Attorney accused me of seeking an opportunity to make an attack on Robert Lenox. I came here at peace in my own mind, with all the world, except Rathbone; and so far from having any disposition to attack Mr. Lenox, I assure you, upon my honor, that I wish he was one of the jury to try this cause; he is a sensible man, and I have the fullest confidence that I could convince such a man, however prejudiced he might be, that I was entitled to a verdict of acquittal without the jury leaving their seats. I hope there is sufficient intelligence among you to enable you to understand this subject, difficult and complicated as it is; and if I have the good fortune to make myself understood, the result will be as I wish it, although I have great and mighty prejudices to combat. With some of you I have had difficulties; but you know that in those matters, I acted with integrity and with candour; that I put myself on my rights, and established the justice of those causes; and however hard their application may have been on you, I am persuaded you cannot be induced to bring your prejudices into this cause, and thereby violate that contract with God, which every man makes when he takes an oath. I, therefore, have not allowed the fear to act on my mind which has so much alarmed my friends since they heard the names of this jury and the manner in which they were impanneled, about which I shall bestow a passing remark.

I do not think you are such a jury as was contemplated by the framers of our happy constitution, who provided that every accused citizen should be tried by an impartial jury: that men who had prejudged the case, as most of you on oath admitted you had done, cannot, in my opinion, be legally considered an impartial jury. No man on earth can be expected to admit that if he finds himself, by new testimony, in error, he is not open to conviction: if not, is it sufficient for you to say, what every man might say, that he considered himself equal to the mighty task of conquering his own opinions, and rendering an honest verdict? All we look after, when listening to testimony, is for such things as will support and harmonize with our previously expressed opinions; not for an excuse for the conduct of the accused; not for circumstances that will induce us to give up unfavorable opinions formed, and to reconcile affairs in themselves of doubtful appearance, with fairness, with candour, and with integrity. As lamentable as this is, I venture to pronounce it a true picture of the human mind. If you are in judgment of law an impartial jury, why are grand jurors and relations considered otherwise? I have taken a juror's oath; I then considered my mind, as to the case to be tried, like a clean sheet of paper, ready to receive an entire new impression; but not so with yours. These defendants have a two-fold service to perform; they have first to remove a very deep impression already made, before there is any room for another—the two cannot exist at the same time—our duty is therefore a very hard one, it is what we sometimes call working double tides. The law presumes every individual innocent until he is proved guilty. You have taken upon yourselves this trial, presuming the defendants guilty, you therefore are

at variance with the law. Now it can never have been the intention for the law and the jury to be at variance. I admit the odds is vastly against us, and I feel thankful that I have been favoured with fortitude and philosophy sufficient to come here and breast the storm, unaided by counsel or friends. But I come so strongly armed that I fear not: my shield is justice, through which not one of the poisoned arrows of the conspirators could penetrate, they have all fallen harmless at my feet: I will pick them up and hurl them back on my accusers. I took courage at the recollection of those memorable words of our dying naval hero, Lawrence, "Don't give up the ship," words that should be written in letters of gold, and placed in our public squares on imperishable monuments, where all coming ages may read them, and improve by their courageous moral.

Gentlemen of the Jury, you have seen sundry papers, contracts, memorandums, and loose scraps, on which appears my hand writing. The most of these papers have been carefully treasured up by William P. Rathbone for some vile purpose, and probably obtained with the same dishonest views. How the District Attorney came in possession of them he can explain if he will. I shall tell you where I last left them, and their history as far as I have been enabled to trace it. The law presumes them in the hands where they were last seen, if the parties do not think proper to explain. For those that were with Messrs. Spencer and Brown, I did, until this moment, expect an explanation. All they have dared to give, is, that the last they knew of them they were in the hands of Josiah Hedden, leaving me to imagine the rest; and I must, therefore, also leave you to imagine the rest. However unkind it

may appear in Messrs. Spencer and Brown, to have contributed those papers for my destruction, I have no complaint to make. They were not, nor ever were, my companions. They are called so, from the single circumstance, that the District Attorney has put us in the same bill—they owed me no debt of gratitude—they were not the repositors of my confidence. The papers they held were fair and honorable contracts, to which they and I were parties, and if the District Attorney had served notice on me to produce the counterparts, it would have been done openly and above board, without the least idea of doing any one any harm—therefore, if their counsel had not, so far as they have spoken, travelled out of the records to assail me, I should think lightly of their conduct in this business. Not so with Rathbone; it has been proved to you by the testimony of Mr. Halleck, John D. Brown, and Robert Barker, that this man was in the constant habit of running to me for advice about paper contracts, claims on underwriters, &c. and Robert Barker has testified that Rathbone called on me, at the office of the Mercantile Insurance Company, some time in May or June, bringing with him the contract, signed "for H. E., W. P. R.," asking me, as the friend of Mr. Eckford, who was absent from the city, if its provisions were clearly expressed. It was for the exchange of $200,000 of stock, any day prior to March next. I suggested an additional article, allowing Mr. Eckford to deliver and receive a part at a time, without being obliged to exchange the whole at any one time, he desired me to reduce the same to writing, on the back of the contract; I did so, and Robert Barker testified that this Rathbone then desired him to copy the contract, incorporating with it the suggested addition; he

did so, and this monster took both the original and copy away from the office. So far as any thing can be discovered from the tenor of the contract, the transaction was fair and honorable, a mere exchange of stock, an every day transaction; the fraud of securing to himself the collection of the $75,000 bonus from Messrs. Spencer and Brown, for the sale of the Fulton Bank, and cancelling the stock notes of Messrs. Lawrence, Vermilyea, and himself, was not alluded to in the most distant manner, by any thing which appeared about that contract, as you will see by the slightest examination, and yet he furnishes the District Attorney with that contract for the purpose of making it appear that I was a party to an affair of his own, of which he was individually to reap all the profits, and his objects he carefully concealed from all these defendants, and knew I was as innocent of all knowledge of, or participation therein, as an unborn babe; yet he, after taxing my time and talents for his exclusive benefit, endeavours to convert my kindness into evidence of crime on my part. This is an offence of so heinous a character that I know not how to describe it. When school boys, we were all learnt to despise tale tellers. In riper age, we view with detestation spies and informers, and with abhorrence, state's or king's evidences. But all these deformities of human nature are christian virtues in comparison with the conduct of Rathbone, words have not yet been coined forcible enough to depict its true character.

The District Attorney himself has not escaped the frauds of this man: he promised him sufficient materials for my destruction, and no doubt, directly or indirectly, applied to Messrs. Spencer and Brown to contribute, promising them also an exemption, if their

united forces would but convict Jacob Barker; hence the papers got into the hands of the nightly negotiators, and were all appropriated to the ransom of Rathbone, who had promised the necessary ammunition with which the District Attorney came here all armed and equipped. Levelling his piece he took aim, and I wish I could say it was an honest aim. Sure of his victim, he pulled the trigger, but courageous as he is, he was not allowed to smell powder—it would not even flash. Astonished, he examines it. It was black, yes, black as hell itself—but it was only ink-powder. Now Mr. District Attorney, if you will hand me those wooden daggers, I will endeavour to exhibit their true quality and character to the jury.

Gentlemen of the jury, you cannot have forgotten that the District Attorney read this paper as if it had been signed Henry Eckford and William P. Rathbone, and not for Henry Eckford, William P. Rathbone, according to its truth. Please to look at it and see the imposition. It is not possible that the District Attorney could have intended the fraud. Unkind as he has treated me, I cannot believe him capable of such an outrage; the object was to make the contract read in the plural *we*, so that the memorandum on the back, in my hand writing being in the singular, *I*, might appear as a separate and distinct condition of a third party, and in the absence of proof who that party was, to have it inferred that I was the party from the single reason that the memorandum was is my hand writing. Whatever may have been Mr. Maxwell's knowledge on this subject, Rathbone knew that I had no interest in the question, and the miscreant intended the fraud when he furnished the paper.

The District Attorney has told you that Messrs. Eckford, Swift and Rathbone would be tried at the proper time, observe gentlemen of the jury, at the proper time, and the District Attorney is the sole judge when that proper time shall arrive, now I most sincerely hope that it never will arrive.

As to Mr. Eckford, the District Attorney should instantly enter a nolle prosequi; in doing so he would best consult his own dignity and the cause of justice; the example furnished by this gentleman's conduct, in his very great sacrifices and exertions to enable the company punctually to pay its debts, has not, and never will have its equal: $200,000 would not replace his losses and advances, and but for the most unaccountable combination of circumstances, which rendered it impossible for him to raise the necessary money, with his princely fortune, which I then believed and still believe, to be half a million of dollars after all his debts are paid, but for this, I say, the Life and Fire Insurance Company never would have suspended the payment of any debt contracted while he was president thereof. If I may be allowed to say that I *know* any thing which I do not know of my own knowledge, and no man can know the secrets of another man's heart, I should say I know that all Mr. Eckford's measures were taken with an honest view, with a sincere desire to enable the company to pay its debts. Of this I think there has been abundance of proof put before the world, to satisfy even the District Attorney; and if Mr. Eckford is to have his feelings harrowed up by another trial, and if farther injury is to be inflicted on him, and on his unoffending family, it will be because he could not perform impossibilities, and not for any thing that he has done, therefore, I *do*

say, most emphatically, that I hope that all proceedings in relation to him will be discontinued, and the same as relates to General Swift. The latter may have lent his name too freely, he may have omitted to perform a duty in seeing that the accounts of the company were accurately kept, for all which, if he has not suffered sufficiently, let him suffer more, but I pray you not to consider such omissions as evidences of a fraudulent intent, my word for it, such a thing never entered his heart. As to William P. Rathbone, God knows, he will be punished enough without any more trials before this court. He has already been tried and convicted by the people at large; the finger of scorn is pointed at him by every man, woman and child who knows his person; and there is not one inch of ground on this habitable globe where his foot can rest in peace.

I did hope that this trial would have been conducted by the District Attorney according to the law and the evidence in the case; on the former trial he took particular pains to nickname and defame me. I heard a part of his summing up speech: it was eloquent beyond any thing ever before pronounced in this hall. His fame for declamatory powers has reached the very pinnacle of greatness. He can add nothing without injuring it, but his speech, eloquent as it was, had little or nothing to do with the law, the evidence, and the facts in the case; and, if the District Attorney wishes to be really great, he must learn to be just, to be liberal, to be generous, or his eloquence will be forgotten as nothing worth. At the opening of this case, the District Attorney told you that I had sold $300,000 of Life and Fire bonds, as agent for that company, within six months previous to its failure; that I recommended not only

that company, but also the United States Lombard and the Hudson companies; that I assisted in palming off their bonds, was deeply interested in the two latter companies, and was employed in managing their business, all which was false, and of which he ought to have been sensible from the testimony on the former trial, and refrained from repeating the calumny on this, as it did not furnish any proof of either of the allegations. Here is a community that has more than a million of dollars in bonds of the different insolvent companies, which they consider in a state of loss. There is scarcely a man or woman who had a hundred dollars to spare that did not intrust the same in these securities, from the very expessive profits they seemed to promise. Now, as the District Attorney knew that I had nothing to do with thus palming off the bonds, or in managing the affairs of the companies, was it not dreadfully cruel to hold me up as the author of all this mischief, and allow his speech to be instantly published in the newspapers, thus enlisting against me the prejudices of every bondholder, and inducing them to believe me the robber of all their treasure? Can any jury be found capable of resisting such a mighty phalanx?

Mr. Leavitt swore, that on one occasion I observed to him, that I considered Hudson bonds as a money-making speculation, better and equally safe with Fulton bank stock; that I considered the connexion between the two institutions so intimate, that they would rise and fall together. Mr. Leavitt also testified, that but for my interference in procuring a change of directors, an application to the Chancellor for an injunction, which he contemplated making, or some other decisive measure, the bank would have failed with the company, and all gone to ruin together. He said that he, there-

fore, did now consider the opinion I gave a very sound and just one.

Mr. Garniss swore that I once offered to sell him a United States Lombard bond, when their price was four or five per cent a month; and had I not the same right with every other man in the community to buy and sell those bonds, and was offering to sell them at about ten shillings in the pound, recommending them? What better evidence could have been given of the alarm which pervaded my mind as to the solidity of this company. Now you have, gentlemen of the jury, every part and particle of testimony that has been offered in relation to my interest in, agency for, or connexion with those two companies, excepting that at about the close I took part in a negotiation for a loan for their relief, which in a great measure failed, and principally because the parties could not give adequate security; and I hope and trust, that this jury are not to be called upon to consider as a crime, my willingness to assist the distressed.

The District Attorney seems to rely upon this negotiation as evidence of conspiracy against the Fulton Bank. You will please to remember, gentlemen of the jury, that Rathbone was, at the time, a director, and therefore the legal representative of the bank—that Mr. Leavitt and Jonathan Lawrence swore that I was authorised to represent the bank in that negotiation; that each had separate parts to perform is manifest from the tenor of the paper produced by the District Attorney in the handwriting of Rathbone; he uses the name of Mr. Eckford, and being, at the time, his partner, it will have its influence: this memorandum clearly establishes, that Mr. Eckford was to have nothing to do with the appointment of new directors;

that was to be left to Mr. Barker to arrange with Mr. Leavitt—this you will please to recollect, was on the 12th day of July, and it was on the day previous that Mr. Leavitt swore that their nomination was to be referred to the opinion of Mr. Catlin. Mr. Catlin testified that Mr. Leavitt and Mr. Barker had, on the 11th day of July, waited on him, and that he had at their united request interfered therein, which, when taken in connexion with the testimony of Alderman Mott, Messrs. Phelps, Hazard, Lawrence, Cornell, and others, of the respectability of the persons recommended and elected on the nomination of Mr. Barker, must put to flight every suspicion on this branch of the present inquiry. However, all this negotiation, was a mere matter of proposition, never reached the form of a contract, and you cannot suppose that it imposed upon me any obligation to furnish the $100,000 wished for by those companies; had the contract been consummated and duly executed according to the tenor of the memorandum, the obligation would have been only to furnish the $1000 per day for the support of the two companies, on their furnishing security, coupled with an assurance that it would have been sufficient to carry them through their difficulties. They failed on the 15th of July, proclaimed themselves utterly insolvent, and the Hudson Company parted with all its securities very soon thereafter to the Fulton Bank; at most, under such a contract, they would not have been entitled to over $3000, say $1000 a day from the 12th to the 15th, and especially so, after they had parted with the power to give securities. As to Mr. Eckford in this affair, all he was to do, was to loan them $25,000 at lawful interest, to help them in their distress, and nothing else is indicated by a single ex-

pression in the papers produced. But they do furnish one other fact, that Rathbone has misgivings as to his treachery to Mr. Eckford. An attempt is made to cover his name with ink. He, no doubt, thought he had been successful, but when the ink dried the original name shone through. Look at it, gentlemen of the jury. Here it is—perfectly plain. Now this same Rathbone has none of the ordinary qualities of man, not even the vindictive passions. He would not harm a chicken, except to help himself. He has none of that bold decisive spirit that would pull down the pillars that support the temple, the fall of which would crush himself with his enemies. He has none of that fire which excited the Doge of Venice to say, "Does he yet live?" Under these circumstances, was it not unjust and illiberal in Mr. Radcliff to ascribe to me bad faith, in not furnishing this money. It would have been better for his clients, had he attended to their defence and let me alone. Mr. Phœnix also must have a hit at me, accusing me of having entwined myself about them like a serpent with a rattle, &c. Now, had I done all this, it would have been an individual act of my own, and therefore no conspiracy. Had he been, what he professes to be, a lawyer, he would have known better, and have not so unsuccessfully joined in the crusade against me.

I say these things, Gentlemen of the Jury, that you may see the repeated provocation these men give me to retaliate on their clients, but I shall not do it beyond the necessity for my own defence. Mr. Hoyt must also indulge in observations to my prejudice by instancing my contract to supply the government with money during the late glorious and just war—he full well knew that I considered that affair my cockade,

my national plume, from which no man could attempt to pluck a single feather, without creating in my bosom instantaneous and determined hostility. He intimated that I had cried down the stock to profit by the fall—he knew better, and knows nothing about the principles of finance, or he would not have so exposed his ignorance by so unnecessarily introducing a business so entirely foreign to the subject before this court.

All governments, in time of great national distress, have allowed some indemnifying condition to the contractors for loans. Our government did no more. It was no project of mine. I wish I had been its author. I should have been proud to have originated so just a condition as the one in question; but as I did not, I will not allow friend or foe to put it on me. The same condition was in substance allowed by Mr. Gallatin to Messrs. Girard, Parish and others, for a previous loan. It was no more than a promise not to make any other contracts for a certain number of days, and if they did, to allow the previous contractor the same terms. This was necessary, as they knew we had not the money and that we relied on the sale of the stock to enable us to meet our instalments. Stock cannot be sold, nor can it be hypothecated for money on a falling market with any thing like the facility with which it can be done on a rising market.

The government was not under any obligation to borrow on lower terms, but could resort to treasury notes, temporary loans, or taxes to supply their wants, or they might be relieved by the arrival of peace. Therefore, if a contractor should have attempted to cry down the stock, he would have a certain and ruinous loss for a slight chance of profit hanging on a very uncertain contingent. But as this has nothing to do

with the case, I will not dwell longer on it. Mr. Hoyt was so eager to get at me, that he forgot the cause of his own client. I therefore will notice it for him, that he may see how uniformly I return good for evil, if the wrong is not too abominable.

The most important feature of his client's cause, was the bill of Exchange for $40,000 on the Greene County bank, which was paid in full, the moment it came back under protest, and Mr. Hoyt forgot to tell you that it had been thus paid. Also, that the bank were in the habit of lending uncurrent money to Mr. Spencer, taking his checks for eight or ten days ahead, without interest. May not this be the true solution to the question, how the bank became in possession of so many checks, for which there was no funds? As to the right or wrong of these transactions, I have nothing to say, more than that I am, as has been abundantly proved, the greatest sufferer by the disastrous dealings between these men and the Fulton bank; about the propriety or manner of these dealings, you know as much as I do, and therefore it does not become me to say any thing.

Gentlemen of the jury—I brought this book here to read you a catalogue of the dreadful disasters of the monied institutions of our city, the present season; but they must be fresh in your recollection, and I will not do so. In neither of them was I a director or officer; nor was I ever a stockholder in either, with the exception of the Fulton bank; but I was the active agent of three other Companies, which have been preserved whole and sound, and the books kept posted up in the most exact order; and yet an attempt is making to hold me answerable for the delinquency of others, and let them all escape by my sacrifice, al-

though many of them were indicted long before me, not one of them has been tried; and since it is found that the unfortunate or the mismanagement of the affairs of the Hudson and United States Lombard companies cannot be fastened on me, the District Attorney has not attempted to inquire into the matters relating to them, although they were under the direction of some of the defendants now on trial.

What better evidence do you want of this being a crusade against Mr. Barker? What has become of the District Attorney's sympathies for the widow and the orphan and other holders of bonds, does he think there are no sufferers by the Hudson and United States Lombard bonds. His conduct reminds me of the Dutch tavern-keeper, who had many worthless customers, who kept their rum accounts on the moulding of his bar-room, with chalk-marks: one day he was called out to train in the militia, and having a very notable wife, she with a view to please her husband, set about cleaning his room during his absence, and on his return he exclaimed you have ruined me—you have destroyed all my accounts, give me a piece of chalk instantly, with which he made out new accounts, his wife looking over his shoulder with tender solicitude, said in a faultering voice, when he had done, are you sure you have chalked them all up—yes, replied the too-satisfied landlord, every single dram is there, and against a great deal better people—and so it is with the District Attorney; his whole aim has been against better people, totally neglecting the true parties to the subject matter.

Gentlemen of the jury—as the District Attorney has been silent as to several of the charges laid in the bill of indictment, I shall not detain you with any obser-

vations thereon, and but few in relation to the Morris Canal. It is admitted on all hands that I knew nothing about the stock certificates obtained from that institution, and when the District Attorney found he could not connect me therewith, it was peculiarly unkind in him not to let me depart therefrom in peace. He represented me as an invading foe, and should according to military science, have bid me good speed in my retreat, but he endeavoured to cast a shade on my exemption from the charge he had so erroneously made against me in that affair. This obliged me to put some questions to Mr. Tallman for the purpose of developing a history of other transactions, to which the District Attorney objected and the court ruled against their being answered; and as I am clear of that matter I will say no more about the Morris Canal, further than that it is in proof, that when that institution became embarrassed, Mr. Bayard and other directors and officers fled to me for relief, and I yielded up all my feelings and saved that bank as I did the Fulton from failure.

And for Mr. Vermilyea, I will say one word. The Morris Canal and Banking Company is a New-Jersey institution, which furnishes prima facia evidence that the matters connected with it took place in that state, and of course beyond the jurisdiction of this court. If they did not take place there, the act of incorporation must be proved, before you can know whether its officers transcended their duty or authority, otherwise you cannot know its provisions, and the act of incorporation has not been proved. Great use has been made of the forgetfulness of some of the members of the finance committee of the Morris Canal, relative to their knowledge of the objects for which they signed

the far famed resolution. Now it would be a libel on these gentlemen's well earned reputation for care and capacity, to suppose that they gave their signatures to a paper so clearly expressed, without understanding it. They did not mean to mislead you: but they told you that they had the most unbounded confidence in Mr. Vermilyea, and therefore it is to be presumed they signed as a matter of course, and did not charge their minds with the subject. In all stock matters, the transactions are so frequent and various, that they are not remembered a week after they happen, unless they are connected with some particular circumstance, calculated to engrave the affair on the mind.

Messrs. Catlin, Worth, Fleming and Halleck, and many other witnesses, gave abundant evidence of the correctness of this position, they having all entirely forgotten the particulars of transactions which had passed through their hands, to a great amount, within a very few months. But Rathbone knew all about the contents of this resolution. He ran through the city with it, to get others to sign it. Mr. Gouverneur swore that he called on him to do so: and although Rathbone was only a director, and not a member of the Finance committee of the company, he also signed it to make himself doubly sure of bending that company to the purpose of cancelling his stock notes to the Fulton bank, and of collecting his bonus of $75,000 from Spencer and Brown. As to the errors in filling up the stock certificates, the omission to transfer it on the books, and the like, Mr. Tallman has told you, on his oath, that they were affairs of his own, with which even Mr. Vermilyea has nothing to do, and surely the District Attorney cannot pretend to make any of these

defendants answerable for the imperfect manner which the clerks of a foreign institution kept their accounts.

At the last trial the judge said that I had not explained satisfactorily how the 800 shares of Tradesmen's stock came to pass through my hands. I think I can do it now to the satisfaction of every unprejudiced mind. It is in proof, that the bank was sold by Mr. Reed, the president, and he was a director in the Life and Fire Insurance Company, and that Mr. Davis, the secretary, was an agent for the purchase—that Mr. Rathbone, another director, was the purchaser—he received it and paid for the stock by his checks—he took his seat as a director—gave a Life and Fire bond as collateral security, and in lieu of those 800 shares which he took up with the knowledge and consent of the president of the bank, who, with the cashier, had been from the formation of the bank intrusted with the whole management of the stock notes. This proof I have culled out of the testimony produced by the District Attorney, and have now been compelled to lift it up to your view, although I never before heard of a defendant being obliged to prove his innocence. Rathbone having answered all his purposes, got possession of the stock of the Tradesmen's Bank on the 12th of July, and on the 14th cleared out, as appears by the minutes of the proceedings of the directors of that institution, on which day they accepted his resignation as a director; and it also appears, by the said minutes, that he acted from the time of the void election, up to that hour, as a member of the committee of finance. What better evidence can be given of a purchaser than by proving who received the goods, who sold them, who exercised ownership over them,

and who paid for them? All this has been proved on William P. Rathbone individually. If he was not guilty, why did he run away on the 14th of July, leaving Alderman Pittman, his honor the Recorder, and the other directors, to fight out the battle in which he had involved them, without their knowing any more about his objects and views than I did? These 800 shares he transfers to Seth Sturdevant, a clerk in the Western Insurance Company, which Company advanced to the Life and Fire on the same day, and the three succeeding days, $13,500. A part of this stock passes to Mr. Catlin, from whom $7000 of the money was procured, and handed over to the Life and Fire, as testified by Mr. Halleck, and the sums charged are on the same days credited on the books of the Life and Fire. Mr. Gouverneur testified that this stock had been hypothecated, and could not, therefore be returned to the Bank when first required, but that he received back 300 shares, and my agreement, brought by Rathbone, to *deliver* him (Gouverneur) five hundred shares, and that I rode up to the Bank in my own carriage, when it was thronged with people, and publicly delivered the stock and took up the said due bill. That he never saw me or spoke to me on the subject; that Rathbone was at the Bank, and took the due bill from him, and subsequently brought the stock, saying Mr. Barker had furnished it. Now, Gentlemen of the Jury, Mr. Gouverneur did not say he knew my handwriting. The paper was not proved to be in my hand, and if it had been, the District Attorney did not give me notice to produce it on this trial: therefore, I have a full legal right to exclude the whole of this testimony, but I will not escape by any technical defect; I, therefore admit I gave the memorandum as I had a right to

do, and that I complied with it as I was bound to do. If I cannot get your verdict on the merits of the case, I do not wish it. If in this business there has been an offender, I have found him out, brought him, with the missing stock, to the full view of the District Attorney, from the testimony produced by himself—and if he pleases to let him go scot free, I trust he will not longer attempt to hold me answerable for this man, Rathbone's misdeeds. No sooner had he got out of the scrape of the Fulton Bank than he immediately involved himself with the Tradesmen's Bank, and paid eighty-four thousand dollars bonus therefor. Had he, in place of making a new bank speculation, devoted $84,000 to the support of the Life and Fire, when the funds of Mr. Eckford, Mr. Barker, and all other friends were put in requisition to aid that company, the excitement which brought the Life and Fire to a stand would not have happened, and none of the long catalogue of difficulties which followed in such rapid and melancholy succession would have been visited on the community. As to the Tradesmen's Bank losing $100,000 by the affair, it depends mainly on the estimate of the value of this stock. The parties quarrelled, and, like all other quarrels, it was injurious to both parties, and particularly so in a monied institution, in consequence of which the stock fell, and is not therefore considered good security for the amount of loans made on it by the old directors, and the new stock notes are not as good security as the old ones; and in this way the bank is said principally to have lost the $100,000. I never knew a wilder speculation—one in which all the proceedings of the parties were better calculated to have an unfavourable effect—an effect entirely contrary to that which, from

the nature of the case, must have been intended. On this account, I am very much mortified at the idea that any one considers me as having been even an adviser in the business. I was not, and all the proceedings of the parties were more carefully concealed from me than from any other man in the city. The District Attorney introduced a witness to say he saw me in the hall of Mr. Reed's house, on the Sunday evening after the injunction was laid, which witness was *contradicted as to other matters* by two other witnesses. He said Mr. Reed and his friends were up stairs, conferring on the business of the bank; but the District Attorney could not make the witness say he even thought I went up stairs, or into any room in the bank. Calling at the house of the president of the bank, on such a momentous occasion, does not look like a secret, nor like a party that wished to conceal all knowledge of interference in the matter. He has got me into the recess of this dark and dismal hall, and he would fain have led me through many winding passages into a still more dismal cell, where he would forever after have denied me the light of heaven. When he got me inside of Mr. Reed's door he thought he had me snug enough in his fingers; but I have much pleasure in telling him that others had, before that time, erroneously thought they had cornered me; but on opening his hand, the District Attorney had a renewal of the feelings of disappointment he was, when a boy subject to, when he vainly supposed he had put his hat upon a butterfly; and you shall see, gentlemen of the jury, how sungly I will get out of the scrape; how charmingly my friend Mr. Nevins will bring me off—I always respected and loved him; but I never expected I should have to consider him my saviour; he has told you that I was at his house

on the same Sunday night, in relation to the negotiation with Mr. Lenox, about which I shall have occasion to speak hereafter. That the injunction on the Tradesmen's bank and the probability of its stopping payment became the subject of conversation; that nothing that had occured on that occasion, or at any other time before or after led him to suppose that I had any other interest in the question than in the general question of Finance, on which it was likely to have a most material bearing. We were both anxious to ascertain whether the bank would stop payment or not; my gig was at his door waiting to take me to my residence in the country. I proposed to him to take a seat with me and we would drive round to the president's house; he did so, we went there, he sat in the gig while I stepped into the hall to make the inquiry; I was absent about two minutes, and returned, saying Reed said the bank would not stop payment. He then left the gig and walked home, and I took my seat in it and drove off; which gentlemen of the jury, forms the whole story of my nightly meetings with these men.

There is one other circumstance in this transaction which I will mention. The moment I was informed of my indictment, I was served with a notice from the District Attorney to produce the memorandum or due bill lent to Rathbone and by him handed to Gouverneur. This furnished strong presumptive proof that one of them had used it for the purpose of procuring my indictment. Mr. Gouverneur has disclaimed it in the most positive and satisfactory manner, but Rathbone, on the happening of that event, discontinued his visits to me, which had previously been very frequent. As soon as I could see him, I charged him with having used this due bill to my prejudice. He, of course,

pleaded not guilty. And here it will undoubtedly be asked, what motive could Rathbone have for my indictment. Knowing that he could have no honest or justifiable cause, I am driven to the awful belief that certain profligate procurers about this hall induced him, after he was indicted, to believe that if he could aid them in involving Jacob Barker in difficulty they would get him clear, vainly imagining that they could make me, too, buy off. Alarmed at the knowledge of his own conduct, and unable to repose in conscious innocence, he falls into these men's hands, and it will be well if they have no other victims. Until the disclosure of other papers on this trial, I was willing to believe no man among us could be guilty of so foul a deed, but the proof has come out too strong and too direct for any one to doubt. All these papers have been found to be perfectly harmless, and they do not, when properly explained, furnish the least evidence or presumption of even indiscretion, much less of guilt, on my part. But that is no apology for Rathbone. These things, gentlemen of the jury, must convince you that I am innocent, as, if I had been guilty, the co-conspirators must have known it, and from what you have seen you cannot doubt but that the District Attorney would have entered a nolle prosequi against any one of them that could have testified that Jacob Barker had been guilty, and the disposition of too many of them to do so is also made manifest, but they cannot do it. I have done no wrong, and they know it. If I had, should I have bearded all these people thus? Could my course have been dictated by any other motive than that of convincing you that no one would withhold any thing to favor me? As soon as the injunction came on the Tradesmen's Bank, the Life and Fire Insurance Com-

pany gave other security to the Western Insurance Company in the mortgage of Thomas Gibbons, and took up the Tradesmen's Bank stock, which was returned to the Bank, and that bond which had been left in its place was taken up and cancelled. The injunction was served on the Bank on Saturday afternoon, the 15th July, and Gibbons' mortgage was given to the Western Company on Monday morning, the 17th of July: these amounts and debts all perfectly harmonize with the testimony of Mr. Catlin and Mr. Halleck, and furnish conclusive evidence of the whole transaction; but as it was conducted by me on the part of the Western Company, and by the other parties indicted on the part of the Life and Fire Insurance Company, more precise and positive proof of all the details cannot be given. Mr. Cox, Mr. Halleck, Mr. Butler, Mr. Gouverneur, Mr. Boyd and Mr. Riker, all testified that no circumstance had come to their knowledge, to induce them now, or at any other time, to believe that I had any interest in the purchase of the Tradesmen's Bank, and from their situation it was impossible, if I had been interested therein, for them not to have had some knowledge of the fact. What better evidence could you have that these men were not my agents than my refusal to trust them with these 500 shares without the surrender of my due bill? If they had been my agents, my tools, my creatures, with whom I had intrusted 4 or 5000 shares of stock, and the whole Bank, should I have denied them so publicly and at so critical a moment, the trifling confidence of delivering 500 shares of stock, relying on their fidelity to return the obligation for it? This single circumstance speaks volumes. If I had been interested therein I should most freely have avowed it. I owed the stockholders

no duty; I was not a director' agent, or officer of the Bank, and no way amenable for the good or bad management of its officers. I cannot account for the strange conduct of the District Attorney in attempting to hold me answerable for the delinquency of others, with whom I had not the least possible connection. The Recorder testified that Mr. Cox had been obedient to the will of the directors; that he had been faithful in the discharge of his duty, and that he had not attempted to intermeddle in deciding any of the matters complained of in relation to the Tradesmen's Bank. That the whole board was fully satisfied that he had throughout acted with perfect fidelity. It was very pleasant to me to hear this confirmation of my good opinion of Mr. Cox from so high an authority. I, however, do not know what I have to do with this matter, except that the District Attorney denominated him a co-conspirator, and held each answerable for the conduct of all those he so denominated.

Much stress is laid on the youth of Seth Sturdevant. On this subject, I can only say, that we are not apt to consider wrong the things we have openly practised through life. I traded a little when a boy, and before I was of age, was interested in four ships and a brig, and had my note discounted, and continued as an accommodation note, at the United States Branch Bank. I have, since I became of age, confided a great portion of my business to young gentlemen not 21 years old, and it never occurred to me that such confidence could be made the foundation of a criminal prosecution. In addition to this practice, Mr. Catlin, Mr. Fleming, and I believe every witness who was examined on the subject, told you, that it was the universal custom to pass stocks by blank powers, that is, without naming

the purchaser or seller; by which means it could pass through the hands of persons without number, and not one of them appear, or be known. However, I will not detain you longer about this custom, but examine the legal operation of the system. Stock, and all other property, is the mere creature of the law, and is equally amenable to that law in the hands of a minor, as in the hands of a person of age. If such minor has no interest in it, the Chancellor can take it from him, the same as a court of law can take it from a person of full age; therefore, this tale about the youth of Seth Sturdevant is got up for the sole purpose of producing stage effect.

John I Boyd swore that I met him on Sunday morning and inquired the news, that he told me the Tradesmen's bank had been enjoined, that I replied, "this is no news, I heard it at Bloomingdale last evening," that I told him it would be a very serious thing for one of the city banks to stop payment, that there was no knowing where it would stop; that he should go and see the president, and that they had better consult Mr. Eckford and others on the business, and that I would go to my office and wait two hours, where he, Mr. Boyd might apply in case he could make me useful. And here is an attempt to make it a crime in Jacob Barker, to have heard in the evening four miles in the country, a matter of fact known to the whole city early in the afternoon, a fact of such vast importance to the city and to the nation, and which related so immediately to the business in which he was very extensively engaged.

Gentlemen of the jury, if Jacob Barker had not known it that evening, the public would have considered him totally unworthy of the high reputation they

had awarded him for keeping as the sailors say, "a bright look out."

It is universally admitted that Wall-street, with all its sins, decried as it is, regulates the finance of the nation, on the operations of that street depends the whole commerce of the country. It is like the heart of man, through which the blood from every extremity of the body has to circulate—then I ask you, was the solicitude manifested by Jacob Barker on the happening of what was likely to shock the fabric on which the finances of the nation depended strange! so strange as to warrant the conclusion that he was a guilty conspirator? Had he been interested in the bank, would not his own vanity, the confidence he feels in his own ability to conduct a difficult affair, have led him into the heat of the battle? Would he not have done as he did in the Fulton bank, rushed into the thickest of it, placed himself in the front ranks, pledged his own money and stock, and exhorted the directors to save the bank from ruin? But he goes quietly to his office, promising to wait two hours to be called on by Mr. Boyd, if he could be made useful, perhaps he wanted another $5000 fee.

In relations to the Fulton and the Tradesmen's banks, Mr. Barker's conduct was as different as the interest he felt in the two institutions; and although directly opposite, you, gentlemen of the jury, are called upon to construe both alike as evidence of a guilty conspiracy.

Mr. Boyd also confirmed the statement about his plan for harmonizing the difficulties in relation to the Tradesmen's bank, and stated that so far from considering it a secret, or myself interested, I jocosely mentioned the brilliancy of the scheme to Alderman

Thorne, one of the disputants, whom we happened to meet at the time, whereupon Mr. Boyd upbraided me for letting out his secrets.

Mr. Boyd also swore that nothing had happened at any time, either before or after the election, that led him to suppose I had any interest or agency in the purchase of the bank. The testimony about the aid and assistance I rendered the Fulton bank, has been so conclusive that I will not detain you to hear me recapitulate it, nor shall I bestow more than a passing remark about exchanging stocks. The testimony of Messrs. Hone and Slidell established such exchanges as common, and only the usual course of business; therefore, all memorandums, propositions &c. in my hand writing cannot be considered as furnishing the least evidence of fraud; and the compensation allowed Mr. Hone was equal to the compensation allowed by Mr. Eckford, which has been here complained of; and I allowed the Mechanics' bank even greater benefit by circulating their notes in the army, &c. which must free Mr. Eckford from all imputations on this subject. The District Attorney significantly inquired where I got the money to lend. Mr. Prime testified that he made a speculation in stock on half account with me to the amount of five or six hundred thousand dollars, immediately after my misfortunes, that it was very profitable; that he furnished all the capital, and paid me half the profits. And Mr. Nevins testified that he had about the same time made a speculation in United States bank stock; that he furnished all the money, and paid over to me four or five thousand dollars profits. Here you see how I got a capital to commence business after my misfortunes. Mr. Catlin, Mr. Corse, Mr. Drake and others, testified as to my indebtedness to

them. These sums enabled me to make the loans to the Life and Fire. Murray Hoffman, one of the receivers in chancery of the effects of that company, testified that they owed me more than one hundred thousand dollars for money lent; that the same had been, when received, deposited in the Fulton bank, to the credit of the Life and Fire Company, and that I held their checks for like sums; that no commissions, interest, or discount had been allowed or charged. The clerks of the Life and Fire testified to the same thing, and added that I had not any thing to do with the disposition of money after they received it from me; that it was appropriated by the officers of the company to the payment of their bonds, dividends, and the current expenses of the company, about which I knew nothing, never intermeddled or made the least inquiry about their business, except to know if they wanted any money and how much. They also testified that I had never examined, or asked permission to examine, any of their books; that if I had attempted to do so, or asked leave to do so, they should not have permitted it, having been instructed by the officers of the company not to allow me to see or know any thing about their books securities or accounts; but that as I never made any inquiry, nor attempted to examine the books, they never had occasion to enforce their instructions against me. They also stated that Mr. Eckford never looked at the books, never attended to the business of the company, never did any thing more than to converse with the other officers and to lend the company money; that he never gave these clerks any other orders than when he had money to lend the company, he directed these clerks to fill checks on the United States bank for him to sign, and after thus proving a total omission to at-

tend to the concerns of the company on the part of its president, the District Attorney asked these clerks if Mr. Barker did not attend to their concerns as much as Mr. Eckford, to which they answered in the affirmative ; thus making out that I did not pay the least possible attention thereto ; yet he intends from his manner of putting the question to make a very different impression from this testimony, but the device, the trick, will not answer. It was a most unfair way of trying the cause, and I am very sorry he obliges me to say so.

These clerks also testified, that at the time of the failure of the company, the securities were put into a trunk, and sent into a neighbouring vault for safe-keeping; brought back daily, until they were assorted and classified, and in order to deliver to Mr. Barker; that they were delivered to him to collect, under the power of attorney, from day to day, as fast as they were prepared, which took a week after the company failed.

Mr. Hoffman testified, that he had found all Mr. Barker's statements correct; that he had furnished a copy of his power of attorney, with a list of the securities received on his first appointment; that the commissions put down in his account, were stated at the time to be only conditional, subject to the opinion of the Chancellor ; and he stated what is vastly more than all the other witnesses together stated, which was, that he had made some errors in his estimate on the former trial of securities on hand ; he then supposed their nominal amount to be about one hundred and thirty thousand dollars deficient ; that he had not found any more securities than he represented at the last court; but that by a more thorough investigation of the accounts, he had found his former estimates

wrong; he now found them all right, the difference was made up by stock and claims on the books, and an error in the supposed amount of bonds out, with a surplus of $10,000. When he made the statement of the supposed deficiency at the last trial, Mr. Eckford and myself were very much surprized; we had both been told they were all right, and, until his testimony had been given to the contrary, I had not, and I presume Mr. Eckford had not, the least intimation of a supposed deficiency; and my word for it, if any of the defendants connected with that company had on that occasion been convicted, it would have been owing to that circumstance, that mistake, and it would have been a never ceasing cause of regret to this court, to that jury and to the world, that men and their families should have had their reputations thus injured by a mere mistake.

Mr. Gantz stated, that he had devoted his time to the books for nearly six months immediately before the failure, and had not discovered the insolvency of the company, he a professed book-keeper, and had nothing else to occupy his mind; and yet the District Attorney wishes you to believe that with all my various concerns, and those of the companies in which I was an officer, to attend to, I ought to have known all about the accounts of the Life and Fire, from the circumstance that I was frequently in their front office, the books of accounts all the time kept in the back room, up stairs, and that I sometimes looked over the said clerk when he was filling up a bond for me, and on one or two occasions had turned over the margin of the bond book, which was kept open on the desk of the front room. What a prodigious smart fellow the District Attorney thinks this Jacob Barker to be.

Now, gentlemen of the jury, I beg you to take those books with you and see if you can find any thing about the affairs of the company by looking over the margin of the bond book, or by looking over the list of the payments, or tickler, for a month or two, which was kept on a loose piece of paper which the clerks testified I had done on one occasion; and here, gentlemen, you have the whole story of my knowledge of those books, and considering this subject, I beg you always to remember, that I was not a director, stockholder, or officer of the company, and that it would have been the height of impertinence in me to have made their books and accounts matters of inquiry. If any one should come to the office where I am a member, and attempt such an interference, I should consider myself insulted: I allow no man to presume the books of those companies are not well kept; and I do not do to another that which I will not willingly allow that other to do to me. And as to the large amount of bonds to the Morris Canal and to the Tradesmen's bank, so far from my having any part or lot therein, I never heard of either until long after they had been furnished, nor has there been a particle of evidence from which it could be inferred, that I knew any thing about them. Those of the Tradesmen's bank appear, by the book and evidence, to have been issued about the 25th of June. The company failed about the 18th of July, and the clerk testified that it was more than a month before they failed when he last saw me look on the margin of the bond book, and then it was to find the particulars of a lost bond.

Suppose I had known every bond issued, what then? Am I to be condemned for knowledge? Would such knowledge have furnished any evidence of guilt on the

part of the officers of the company, or of the insolvency of the company itself? Most certainly not. And was I not bound to presume every thing fair, honest, sound and solvent, when I saw a man of such fortune and shrewdness as Mr. Eckford daily pledging himself to any amount for the company? These large sums, two or three hundred thousand dollars, seem to have made a frightful impression on some minds, when they do not raise in mine the most distant suspicion. I have been in the habit of dealing in countless millions; and all things must be judged by comparison or we are sure to fall into error.

Some loose street conversations have been picked up, and such expressions as were supposed to operate against me have been selected and brought here, and some too, by Cheesbrough, Leavitt, Reed, &c. Have I not a right to expect your indulgence in relation to their recollections? Is it at all likely that they can remember the precise words used by me? As to Cheesbrough, he has sworn to so many harmless things on this trial, which it is evident he supposed would operate to my prejudice, which he omitted on the former trial, although he had then sworn to tell all he knew, that I am constrained to believe he imagined them for the occasion, in revenge for my having drawn a picture, in summing up at the last trial, of his having converted to his own use the funds of a bank which he had been hired to protect, and in which bank I was the largest stockholder exclusive of stock notes, and consequently the greatest sufferer. It is in proof that this man swore on the former trial, that he knew nothing about the Hudson Company, that although his name might have been published as a director, he never met with them, and that he was entirely ignorant

of their concerns. And now, it has been conclusively proved that he was constant in his attendance, met with the directors, voted on the most important concerns of the company, was one of its finance committee and acted as such, and he and Mr. Leavitt gave each other the lie direct on their oaths, standing beside each other, and perfectly understanding each other. Now can it be possible, gentlemen of the jury, that you will allow the testimony of such witnesses to prejudice either of these defendants?

If it was wrong in the Life and Fire to secure Jacob Barker, was it not wrong for the Hudson to secure the Fulton Bank? The cases are alike, and the District Attorney knows it—why, then, does he confine his inquiry to one of the two institutions, both equally culpable? Is there any other reason for it than that by the one, and not by the other, he hoped to reach me? If it was wrong for Jacob Barker to receive the effects of the Life and Fire, was it not equally wrong for Mr. Leavitt to receive the effects of the Hudson? Are we to be told that David Leavitt, and his associate directors, are to be allowed to do with impunity that which you are called on to convict Jacob Barker for? For the District Attorney has, by his own showing, made the delivery of the Hudson effects to the Fulton Bank precisely what the delivery of all the Life and Fire effects was, had they all been delivered to me in payment, or as security—but it was not so. Mr. Selden told you that he had been employed to draw an assignment to me—that when I heard him read it in the presence of Mr. Eckford and other officers of the company, I objected to receive it, at the same time consenting to become the company's agent in collecting; in consequence of which the power of attorney, which has

been proved, was duly executed and delivered to me. If these officers had a right to make this power, it will be binding in law—if not, it is a void paper, and this is not the proper tribunal before which to try that question—it is before the Court of Chancery; and I rely on his honor Judge Edwards so charging you on that point as for it not to come under your consideration, whatever Rathbone, or any others of these parties or their counsel, may now intimate. What better evidence can you have of their good opinion of me—of their confidence in my capacity and integrity, than that furnished by the fact of their willingness to confide all to me? To say that I had not a right to get pay or security, if I could, for a debt due, and that Mr. Reed, Col. Fish, and the other bond holders had, would be only of a piece with every thing else that has been urged against me on this trial. Be that as it may, my word for it, gentlemen of the jury, there is not one of you, nor any man on earth, that would not, under like circumstances, if he could, have got his debt secured; and if he had known of the company being on the eve of failing, he would have pressed for pay or security with redoubled zeal. The District Attorney knows this to be the principle of action with all men. Why, then, does he blame me for what every one does openly and avowedly?

The District Attorney in vain endeavoured to make me out a large vender of bonds, which forced on me the necessity to prove myself a large purchaser. Having done so, I suppose it is also to be considered evidence of fraud. Do what I will, it is alike to be considered wrong, because Jacob Barker did it.—Every disaster, every wrong that is done, is to be laid to my charge, which reminds me of the anecdote of the Jack Tar, who, when paid off in London, clad

himself in white trowsers, blue jacket, and glazed hat, and went on shore to see the fashions: he was soon attracted by music, and entered a juggler's shop, who performed many amusing tricks, such as swallowing forks, jack knives, and marling spikes, mending broken eggs, and bringing dead birds to life, when a spark accidentally fell from the light into a flask of powder, and blew the whole party up: Jack stood near the bow window, and was thrown topsy turvy into the garden, and when the affrighted tar recovered his senses, he exclaimed "what the devil will he do next?" Nothing is more common, when a president and set of bank directors are turned out, an insurance company breaks, or a broken bank is resuscitated, than for the question to be asked, "What the devil will Jacob Barker do next?"

It is in proof that Mr. Eckford resigned the Presidency of the Life and Fire Insurance Company on the appointment of Mr. Barker as the Attorney for the collection of the debts. Is it strange, from the condition in which the books are found, that he, on retiring, should wish some other person to assist in the collection, than those who had been associated with him in the management of the business of that company; leaving those associates at liberty to post the books and investigate the accounts; and was not Mr. Barker a proper person to be appointed? At any rate, it is to be presumed he thought himself so, and no one can question his right to accept the agency, even if it was indiscreet in the company to appoint him. As to my capacity, I put myself on the exhibit before you on this trial, and if that does not satisfy you that I was capable, I shall be content with your considering me otherwise; and as to my being considered worthy of

confidence I leave you to draw such inference as you please from the testimony furnished of my having the confidence of other men and institutions. All this quarrel is about the effects of the Life and Fire Insurance Company carried on against me by the stockholders, who are seeking to deprive the bondholders of all participation therein, on the allegation that the bonds were issued without the authority of law; the receiver in Chancery has told you that I offered to give up all if they would pay the balance due on a reference of my claims to persons to be appointed by themselves—more ought not, and cannot be expected of me.

In my opening speech, I told you that my salary in the Western and Dutchess Insurance Companies, was paid by the burning up of Exchange Bank notes, to the amount, at par, and this has been fully proved by two witnesses. Mr. Reed, a young man who lately failed in commercial business, and turned broker, undertook to tell you, that he knew better than Jacob Barker did, how to conduct money operations for the interest of Barker's employers. Of this, I shall leave you to judge, as also of the impropriety of his thus volunteering an opinion on that point. He told you he also wished to purchase bonds, and that my competition interfered with his expected profits. Several witnesses told you that I regulated the price of bonds in the market, but when they were requested to explain, they, one and all, said, all they meant was, that the effect of my large purchases was, to make them bear a better price than they otherwise would have done. And was this wrong? Did not every other purchaser effect their price in the same way in proportion to the amount purchased? And does any one think of charging Colonel

Fish, Mr. Clarkson, or the other holders of bonds with a fraudulent conspiracy, because they bought and paid for bonds? And does any one think of calling co-conspirators, the cashiers of the different banks, or other individuals who have lent money on hypothecation of the Tradesmen's Bank, or other stock, from the single circumstance of their having lent money on such stock?

Suppose that Mr. Eckford, and the other officers, knew the insolvent state of the company, would they not most studiously have concealed it from the person from whom they expected to borrow? Would any man of common sense have intimated on such an occasion, a thing that would infallibly have cut off all hope of getting the money? Can you, with your knowledge of Jacob Barker, bring your minds to believe that he would have lent his money, or the money of the companies whose interest he was bound to protect, if he had known the condition of the Life and Fire Company? Much stress has been laid on the nominal amount of the securities in my hands. If you compare the value thereof, with those left on hand, I doubt if you would think I got too much to secure the debt due; would either of you give me $150,000 cash for them, if you had the money in the bank, taking chance for their collection? My word for it, you would not. Mr. Cheesbrough let out a fact on which the District Attorney seized with wonderful avidity, and he means to use it to my prejudice, but he will awake from his delusion before he closes his summing-up speech, as it is in direct contradiction of his opening speech, in which he incautiously said that I had put off on the community, $300,000 Life and Fire Bonds; the fact was, that in my dealings with the Life and Fire, or with Mr. Eckford, that I paid in Life and Fire bonds to the amount of

$75,000. These bonds, it is in proof gentlemen, I bought from the brokers in Wall-street, and I did pay them to Mr. Eckford on account of the Columbia bills. Thus you see that so far from palming them off on the public, the operation relieved the public from that amount. This is no merit of mine, but it speaks volumes for Mr. Eckford, that he should with his personal property have taken up the bonds to such a vast amount. How could I help believing the company good when its President gave such unanswerable evidence that he thought so?

Gentlemen of the jury, the charge against me, which you have sworn impartially to try, is a crime of the mind. The fraud, if any there were, which in such cases follows the original crime, can only be urged as evidence of the conspiracy, and in aggravation thereof. A criminal conspiracy, as has often been stated to you, indicates secrecy, mystery, the fear of detection, &c. It is scarcely possible to exist without these necessary concomitants. Now I ask you soberly to reflect and say whether you have seen in any part of my conduct any thing like secrecy, mystery or fear of detection. Have I not been on all occasions frank and open? Have I ever manifested the least disposition to hide or miscolour any thing I was doing? Did the manner of delivering the stock to the Tradesmen's bank indicate any wish for concealment? Did the manner in which the powers of Seth Sturtevant were executed publicly on the counter of the Dutchess County Insurance Company, in presence of Mr. Sturges and Mr. Halleck, and subsequently my taking that stock to Mr. Catlin, indicate any wish for secrecy? Did the open manner of the execution of the power from the Life and Fire, and the receipt of the securities, indicate any wish for

concealment? If you think so, how can you reconcile therewith it being done in the presence of Mr. Selden, all the clerks of the Life and Fire, its president, assistant president and secretary, Mr. Vermilyea and Rathbone, and with the knowledge of my clerks and those in the offices of the Insurance Companies to which I am attached; and how could any one of those securities be collected without giving publicity to my having them? These considerations must induce you to come to the conclusion that if this was a conspiracy on my part, it was at least exempt from one of its most hideous features, a wish to conceal: and as to a fraudulent intention there being no proof against me, you have to form your opinion from circumstances only; in doing which you will be pleased to recollect, that not a single witness has intimated that I did not honourably comply with all my engagements, which were very extensive in the matters which have been brought under your notice. No trick, no device, no meanness, has in a single instance been brought to light. Some trifling jokes or light street conversations among Brokers have been brought here to my prejudice. Had all my chat with the Brokers in Wall-street been brought here, it would have taken you a month to hear it, and an age to understand its application. It is indeed wonderful, when we consider the disposition that has been manifested to injure me, that not a single fact to my prejudice has been proved; and I do say, that before you can bring your minds to believe that I have been guilty of the dreadful crimes with which I stand here accused, you must perceive an adequate motive for their commission; and to enable you to estimate that motive, it is proper to inquire also as to the motive I had for pure and upright conduct. I believe I love

my family; of their future fame and happiness I must have been totally regardless, before I could have hazarded that which is most dear to a parent. It has been abundantly proved to you that I have been honoured down to the present period with the confidence of our most respectable monied institutions and individuals, all which would be withdrawn from me if it should be supposed that I was under any circumstances capable of perpetrating the crimes detailed in the bill of indictment. I am very ambitious as well as vain; and although they may be weaknesses they are so far from fraud that they are sure guarantees against fraud. I have been honoured by having on one occasion the mantle of the people placed on me, and acted as their representative in the Senate of this state, which imposes on me an everlasting obligation to preserve the honour of their representative, who delights to live among them. And if with all these inducements to have refrained from joining in a conspiracy to defraud, I took leave of my conscience and sacrificed all these objects and duties, then indeed I deserve the most severe punishment you can inflict, death itself would not be too much; but before you can bring yourselves to believe me to have done so, you must imagine some adequate motive; and what can that have been? I was no stockholder, no dealer in the stock of the insolvent companies, no participator in the dividends, no salary man, no director, no bond seller, nor borrower of the company's securities, and had no one interest to be subserved by being a party to the conspiracy, if a conspiracy there has been; and therefore it does appear to me utterly impossible that any unfavourable conclusion can rest upon your minds.

But be your opinion, gentlemen of the jury, what it may, as to my conduct, I do assure you that none of these defendants had any thing to do with it. I do hope and pray that they may not be made to suffer for my errors, if I have committed any. My negotiations were all with Mr. Eckford, and not with these defendants; he assured me in the most impressive manner that the company was good; I believed him, and acted on that belief. He supported his assurance with his name and guarantee. So good are the bonds, said Mr. Eckford, that I will hold myself personally answerable to you for whatever transactions you have with the company; and his every act, down to the failure of the attempted negotiation with Mr. Lenox, convinced me of the sincerity of the opinion he expressed; and I have seen nothing since to induce me even to doubt that Mr. Eckford believed that the bonds of the Life and Fire Insurance company would all be punctually paid. It is abundantly proved that the disasters of the company had their origin in transactions long before the period when they applied to me for money; and if I am to blame, it is for trying to help them pay their debts, and for not having refused, when, from the present appearances of the books, accounts and funds, they evidently would have failed by New-Year last, but for the aid received from friends; and if they had done so, $1,300,000 bonds would have been left in the hands of the community in place of $600,000.

Allow me, gentlemen of the jury, in the most emphatic manner, to call your attention to the course of the Life and Fire Insurance company from the period when I commenced furnishing money down to the day of its failure, and see if you can discern any thing but

evidence of a fixed determination to pay all its debts and to discontinue the emission of its bonds. What are the facts? 1st. The amount out was reduced from 1,300,000 to $600,000 in six months; and not any new loan of their bonds was made, with perhaps one or two trifling exceptions during that period. Those that were put out were mere renewals for such dealers as could not pay; and to prevent imposition on the part of such dealers, Mr. Vermilyea was appointed to take the bonds, receive the money, settle the premium, and give up the notes, &c. all which, from the testimony, he appears to have done with fidelity, and without any loss to the company. All this time Mr. Eckford lends his money, his notes, guarantee, his bills on Colombia, &c. Look at the attempted negociation with Mr. Lenox the day before the failure of the company, would he have done this if he had not supposed the company good? Was it not like a ship, at sea, overtaken by a white squall, when the captain, mate and all hands run alóft to take in sail, but in spite of their utmost exertions the ship could not resist the whirlwind, and yet all on board, as well as all those on board the neighboring ship, who endeavored to lend a hand to avert the calamity, are to be alike censured?

It was attempted to make you believe that I had concealed the fact of my having the control, as an officer of the Mercantile Company, of those two thousand shares of Fulton stock; and if I had, what harm would there have been in it? Has not every man a right to manage his own business in his own way? You must recollect how many questions were put touching this matter, and what a very solemn manner was assumed on the occasion. But what were the facts? It was not my fashion of doing business, as Mr. Halleck told you, to

have secrets; therefore, I exhibited them to the brokers of Wall-street. Mr. Tracy and Mr. Nevins both testified to this fact, and Mr. Leavitt testified, and it also appeared by the books of the bank that the certificates could not have been absent from the bank, at most, more than one day; consequently, if a secret there was in this business, it was of mighty short duration.

As to the disclosed papers, on which is found my hand writing, what are they? 1st. A contract with Messrs. Spencer and Brown, dated January 20, 1826, for the sale of 610 shares of Fulton Bank stock, held by me at that time. as has been proved by Messrs. Tracy, Slidell, Drake, and others, deliverable at the option of Spencer and Brown at any time within six months. There surely was no wrong in this. 2d. A memorandum in my hand writing, dated 21st July, 1824, simply proposing to fix a price for that stock,the parties having failed, and being unable to take it. Was this wrong? *Has Jacob Barker no rights left him in common with every other man in the community?* 3d. A contract between Mr. Eckford and Messrs. Spencer and Brown, dated 10th May, 1826, in the hand writing of William P. Rathbone, for the exchange of the 2000 shares of the Fulton Bank stock for the 2500 shares of Morris Canal stock, on the back of which there is, in my hand writing, a very innocent and very prudent clause suggested to be added. 4th. A memorandum without date, in the hand writing of Messrs. Spencer, Brown, Barker and Rathbone, of a negotiation for the relief of the Hudson and United States Lombard Companies. And was it wrong even to talk about helping those in distress? 5th. A more formal memorandum of the same affair, dated the 12th of July, in the hand writing of William

P. Rathbone, in which memorandum some words are interlined in my hand writing, from which it clearly appears, that the said memorandum, without date, was written on the same day, or the day previous. 6th. A memorandum in my hand writing, without date, of $400,000 worth of stock, without one word or circumstance which indicates to what use it was to be applied or for what purpose it was intended. So entirely innocent are the contents of this paper, and so unintelligible as applied to any thing before this court, that but for the District Attorney having now condescended to answer my inquiry as to the use he intended to make of it, I could not have said a word about it. And now I will only remark, that he might as well attempt to use the inventory of any stock of goods in town, or a part thereof, as evidence of a conspiracy against the state, as this memorandum to prove my being knowing to any thing wrong about the exchange of Morris Canal stock or Fulton stock. When Spencer and Brown were obliged to take up their Fulton stock, by the unanimous vote of the Board of Directors of the Fulton Bank on the 6th July, it being unlawful for that Bank to lend money on its own stock, there certainly was no wrong in their endeavouring to get other stock that would be acceptable. The $400,000 in this memorandum is made up of five different stocks, all supposed to be good, and three-fourths of which still continue good. There certainly would have been no wrong in making the exchange which the District Attorney wishes you to suppose was intended when that memorandum was made out; and because that negociation, if such a negociation there was, fell through, and another totally different, between different parties, and with different

stocks, was consummated for a part of the amount, the District Attorney wishes you to infer that I was also a party to the negotiation. This was not the case, nor does the paper warrant such inference. But if it had been, there would have been no wrong in it, unless I had known that false certificates had been procured from the Morris Canal, which it has been proved over and over again, that I knew nothing about. By saying false certificates, I do not mean to express any opinion. Whether they were false or true, I know not, and had no part or lot therein.

Gentlemen of the Jury, I have not come here to ask favours at your hands; but I demand, as an act of justice, that if your opinion should be against me, you will say in what particular. To say I have been guilty of all the charges in the bill, would be violating your oaths. It is not now pretended that I have offended against all those parties; so entirely innocent of some of them does the District Attorney know all these defendants to be, that he has not asked a single question touching the Mechanics Fire Insurance Company, nor several other points; therefore, I think, you will be compelled to specify the particular wrong each defendant has done, if wrong they have done; if so, when you come to my case, I apprehend no specification can be made; and I do hope and trust, that you will not mix together all these matters, separate and distinct in themselves, so that nothing can be seen but the wrong, or supposed wrong, without saying in what particular, or by whom committed.

Messrs. Oakley, Davis and Maxwell followed Mr. Barker, and the Judge then delivered the following charge.

JUDGE EDWARDS' CHARGE.

Gentlemen of the Jury—In charging you on the subject of this trial, I shall first turn your attention to the law, and after a careful consideration of its bearing on the case submitted to you, I shall direct your attention to the testimony. The defendants stand indicted for a conspiracy. As to what a conspiracy is, and its legal definition, there appears to be no discordance of opinion among the opposing Counsel. In other points there is a difference of opinion, and to these I shall first turn your attention. This indictment contains two counts, by which word *counts* you are to understand separate and distinct charges. Each count charges one conspiracy, and one only. These defendants under this indictment cannot be found guilty of more than two conspiracies, and it is competent for you to find part guilty on one count, and part guilty on another, or to find the whole guilty on both or on but one. To this, exceptions have been taken by the counsel for the parties. You have been informed, and correctly so, that you are the judges of the law and the fact—far be it from me to infringe on the particular province of the jury in that respect, my own duties are sufficiently imperative and painful: but, although it is the province of the jury to judge both of the law and fact, it is nevertheless the duty of the court to state what views they entertain of the law. You are not to take implicitly as law what is laid down by the court, but under your own discretion, to decide whether such be the law. The part of the court is to enlighten, not dictate to the jury. Exceptions have been taken to this indictment. Before I proceed to

consider these, I would remark, that it is competent for you to find a part of these defendants guilty, and to acquit others, bearing in mind that two must be convicted or none; however reprehensible, however criminal their conduct, unless they conspired together, you cannot convict. It is contended by the counsel for the defendants, and has been repeatedly pressed upon you, that unless you find these defendants guilty of conspiring to defraud all these five institutions, you cannot find them guilty of any part. This, gentlemen, I do not hesitate to say, is not the law. They cannot it is true, be convicted of any thing that is not charged in the indictment; the public prosecutor must keep within the scope of his charges; beyond them he cannot go, but on the contrary, it is far from incumbent on him, to prove every charge as laid, with all its alleged aggravations. In an ordinary case of assault and battery, the indictment avers that the defendant assaulted the prosecutor with sticks, staves, stones, &c. when after the proof has been rendered, it would appear that the defendant had committed a simple assault. So also in a case of murder,—although charged with murder the prisoner can be convicted of manslaughter. And this in criminal cases is enough to answer the ends of the law, and to furnish to the defendant all the knowledge of the charge against him, the law requires he should possess. It would be absurd to say that because the charges with all the allegations have not been proved in their fullest extent, you cannot convict them on this simple charge. This indictment goes on to state that the defendants unlawfully conspired together with intent to defraud the five companies. The Counsel for the accused have urged to you that the *intent* is the essence of the charge, and unless the in-

tent is proved as charged, and co-existent with the acts of the defendants, that they must be acquitted. That I may not mislead you, I will read to you from a decision of our Supreme Court, in a case on a forgery of the name of Daniel Ludlow & Co.; the allegation was of an intent to defraud Daniel Ludlow and Daniel Ludlow jun. It was shown that there were three partners in the house of Daniel Ludlow & Co. And the counsel for the defendant urged that the judgment should be arrested, because there were three partners in the house, and the indictment alleged an intent to defraud two only. The court held that it was not necessary to state an intent to defraud every individual of the company, and that all the defendant could require was that the nature of his crime and name of his accuser be set forth with sufficient certainty. Such also was the opinion of the twelve judges of England, in a case somewhat similar, and is a complete answer to the objection of the defendant's counsel, that this decision is founded on the phraseology of our own statute. No principle of law exists which is not capable of a practical application. A contrary rule to the one here laid down would cause a failure of justice, from want of materials on which to found an indictment. (Judge Edwards instanced the case of passing spurious bank notes, and read from the case of the People vs. Curling 1 John R 329.) You will also observe, that in this case the intent was laid far short in the indictment, of what on the trial was proved; whereas, in the case before us, the reverse is the case, and the objection taken is, that the intent must be fully made out as laid, and lays it down explicity as the law, that if the intent is proved within the scope of the charge, it is sufficient to warrant a conviction.

Another point made use of in the course of the argument, and substantially taken as an objection by the opposite counsel is, that unless you are satisfied that these defendants intended to cheat these institutions of their money, *and never to return it*, you cannot find them guilty. This, I unhesitatingly declare not to be the law. The allegation in the indictment, is that the defendants unlawfully conspired to defraud certain institutions of their goods and chattles. Now, if a man is fraudulently deprived of the possession of his property, or the use of his money, for a month, a year, or ten years, though the party intended to return it, he is nevertheless defrauded of his property. So again, if one forges the name of another, upon a note or bond, it is equally a forgery whether he did or did not intend to take up the note or bond when it falls due.

The acts of any one of these defendants, it is stated, are not binding on another. This is, in part, true. You will bear in mind of what the parties stand indicted, that it is not for fraud but for conspiracy, and that therefore, however improper their conduct, however criminal their proceedings, unless they *conspired* together to perpetrate their guilty intentions, you cannot convict them. I believe I have now noticed all the legal points worthy of consideration. I shall now turn your attention to the testimony, going no further into detail than the necessity of the case shall require. The case has been so long under your consideration, and the facts have been so often repeated that you are by this time too familiar with them to require repitition. I shall commence with the Life and Fire. It is of cardinal importance towards obtaining a full understanding of the case, to know what was

the situation of this company at the time of the various alleged frauds committed by the defendants; and also how it stood in the view of the defendants. If they were aware of its situation, when they represented it sound, it is one thing. If they believed what they said when they represented this institution as sound, then are they are not guilty of the intent, and no imputation should be cast upon them on account of their sayings. But what was the situation of the Life and Fire? It appears that on the failure of that institution, they had bonds out to the amount of $650,000—that they were indebted to Mr. Barker in the sum of $130,000, and to Mr. Eckford in the sum of $40,000 more for money lent; to the Mercantile Company were they also indebted $40,000, and to the other companies, of which Mr. Barker was an officer, 40 or $50,000 more, whether for cash lent or other debts, does not appear; the whole amount of debts exceeding a million of dollars. To meet this enormous amount what did the company possess? We have the testimony of Mr. Hoffman and Mr. Hough to show, that to meet these debts, not more than $20,000 will be realized out of the securities to the amount of $550,000 which came into the hands of the receivers! The rest passed into the hands of Barker, to the amount of about $500,000. How far was the situation of the company known to its officers? In May last it appears that there were $500,000 in dishonored notes in the possession of the company. Can it be possible its officers were ignorant of this—officers regularly appointed by the laws of the company, and receiving competent salaries to conduct its affairs exclusively? Can it be that they had so neglected the duties incumbent on them as honest and impartial officers, as to be ignorant of the fact, that

the enormous sum of $500,000 was then laying in the drawers of that company, in dishonored notes?

It is said that the means of knowledge was not in the hands of the defendants, because the journal and minutes were not written up, but still they had the bond book, and bank and other books sufficient to show the situation of the company. For six months previous to the failure of the company, Mr. B. was in the habit of making daily inquiries as to how much money would be wanted that day, as it appears that he loaned the company $130,000. Mr. Barker was the active agent of the Dutchess, and the Mercantile Insurance Company, to which the Life and Fire was largely indebted, and he and Vermilyea know the claims of those companies, and if they did know this, and $500,000 of protested notes were in the drawers of the company, how could they be ignorant of the situation of the company?

Let us retrospect a little, and examine the affairs of this company for one or two years previous to its failure. And first we are met with the extraordinary fact, that since the month of August 1824, the books of the company were not written up. Not written up! And why not? Is this the common practice of our mercantile men? Is this usual with our banks and incorporated institutions? Were not the clerks competent to the task? But close upon the heels of this we are met with another no less important fact. In January 1825, the minutes of the company cease.—The directors are no more called together, except for the purpose of choosing officers. They are at once cashiered. What motive can be assigned for this?—You observe then, this company moving forward—its

directors cashiered—its books in confusion—and its officers faithless to their trust. Presumption presses strong upon us, that its officers were interested in keeping its affairs secret. If their acts were laudable and honorable—if they had performed the part of faithful servants, why this objection to calling the directors together and rendering an account of their stewardship. So far from this, they continue their operations as though their individual ends were alone to be consulted, and they were not bound to make answer to any one, of the manner in which they conducted the company's affairs. And now are we to be informed by these officers, that *they* did not know what was the situation of these books? But follow on and mark the result. On the winding up of this affair, the bondholders and stockholders are met with the appalling facts, the one that the evidences of debt in their possession are worth five per cent., the other, that the amount of their advances is sunk in toto, and the first information afforded them is furnished to them in common with this whole community. How has this amount of capital vanished? They turn to the books, but there find no information: they ask its officers, they are as ignorant as the stockholders: no information can be obtained. The facts, gentlemen, are before us and speak for themselves. Mr. Davis was the Secretary of the Company from the commencement. Mr. Vermilyea had the bond concerns particularly under his charge, and on him the company relied for their resources. He occupied a commanding position. One who is called upon to furnish means must be acquainted with its concerns. It appears that the Company was in distress anterior to its failure. Mr. Barker loaned it $130,000, and Mr. Eckford $40,000. They

could not therefore be ignorant of its securities and its situation. The astonishing capital of $400,000 completely vanished, and the company become money borrowers, instead of money lenders. These are the leading facts as respects the knowledge of Davis and Vermilyea. We next come to the agency of Mr. Barker in the company. It has been proved that for a number of months previous to its failure, he was on terms of intimacy with its concerns; for two months he was there almost daily, and supplied them with the funds necessary to carry them through their daily operations. So far as respected raising money for them, he was the most active. He was the agent of the Dutchess and Mercantile Companies, to whom the Life and Fire were largely indebted. He called daily to inquire how much was wanting for that day, and when intending to leave the city for a short time, he examined the Tickler for a month a-head, to know the exact amount he should raise previous to his departure. This was not a transient affair, a sudden pressure of the times, but durable and long continued.

The books were open to Barker's hands, and he might have informed himself if he wished, of the state of its concerns; and it is to be presumed that he did so inform himself before he loaned them money? Again, Mr. Barker, before he loaned them money was mixing in the money market; active in his purchases of bonds; and when the credit of the company was constantly falling, and public confidence diminishing, he still kept up a bold front, and persevered in his purchases. Would he have done this had he been in ignorance of its affairs? But further, he stated to others that he knew the company was good, and how could he have known this, but from having

examined its concerns? Now with these means of knowledge in their possession how have these defendants conducted? In May last, Barker, in a conversation with Mr. Alley, informed him, that the bonds were good? that he was a large purchaser, and had no doubt they would prove sound. In the November previous, he had another conversation, but it does not appear that the company was then insolvent. Mr. Nevins testified, that he had seen, at one time in Mr. Barker's hands, a large amount of bonds, say from $50 to 60,000; Barker told him at the time, he would make more money out of them, than he, [Nevins] would out of his Fulton stock. Mr. Garniss also stated, that Barker had Life and Fire bonds, and said they were good, and he would not part with them. Whether this was a serious statement of Barker, or a game played off to induce Garniss to take the bonds, you must determine. On the 17th of July, the day of its failure, Mr. Flack states, that Barker said the bonds were good, and that he would take $50,000 at one and a half per cent, one per cent below the market value: this was said in Wall-street, in the presence of brokers and to a broker.

You, gentlemen, are to judge, whether it was a *bona fide* offer, and whether if it had been accepted, he would have complied with it.

I shall not trouble you with a repetition of the strong expressions of Davis, expressions that no one would be justified in using except from personal knowledge. Look at the statements of Vermilyea—that the bonds all belonged to customers. What story could be better calculated to excite a belief in the solvency and prosperity of the Company. To some extent this statement was correct, but in by far the most cases it has been proved untrue.

These are the declarations of the parties—let us proceed on one step farther and examine their acts. First and foremost stands the fact, that in the month of May last, the company declared a dividend of two per cent. out of the profits of the institution for the quarter. Was the like of this ever heard of? At a time when the company were struggling for existence—when the charter expressly requires the dividend to be made out of the profits, to declare a dividend of two per cent. And who declared it? Not the directors, they were cashiered long ago. Was it found in fact that they had a surplus profit. Why was it done? You gentlemen, as men particularly acquainted with monied operations, can easily infer the cause. What could be better calculated to establish a confidence in the stability of the company? It was a high-handed act of authority on the part of the officers, an uncommon course of proceeding, and yet the stockholders went through the farce of receiving the two per cent. out of the profits as it was termed. Why the neglect of making a statement of the affairs of the company, as provided by the by-laws? Why all this mystery, if their proceedings were honest? Why these declarations to Nevins and others—for what purpose were they made, if not for the purpose of mischief? I care not whether they intended these bonds to be paid or not. If they did conspire to work an impression on this community, that that company was solvent, sound, and unshaken, when as they must have known its affairs were in ruin—then are they conspirators, and as such should be convicted.

But as regards Mr. Barker, there are other considerations, and here I am happy in addressing a jury so intimate with our monied concerns. If Mr. Barker

did loan this company $150,000 without security, it affords a strong presumption that he believed them solvent; if also, as the officer of the Mercantile and Western companies, he induced those companies to become large purchasers of Life and Fire bonds, it yields additional proof of his innocence, and if, after this he had become the loser to this amount, strong indeed would be the presumption in his favour. But what is the fact: it appears that on the failure of the Life and Fire, the securities of the company passed into his hands to the amount of five hundred thousand dollars. Now, gentlemen, let us consider what were the nature of Mr. Barker's debts, and why was he secured? Were they confidential or business debts? If confidential, then there was no harm in thus giving him the preference: but it appears from the evidence that Barker was a large purchaser of bonds; that after the transfer of the 800 shares of Tradesmen's stock, he became more extensively engaged in his purchases, that as Mr. Alley testifies, he told him his companies went all lengths with them. It appears from the books that his companies were creditors to a large amount, whether for bonds or not we cannot say, and Mr. Hoffman testified that $500,000 was passed into his hands to secure the payment of $130,000. The evidence of Mr. Barker being a creditor to that amount is not as satisfactory as it should have been. Why then were these passed to him? Was it not as a general security for other engagements for the purchase of bonds? Why was he secured, why was he selected as the favourite, if there was any favouritism? Were there not orphans and widows, who at least might have been selected under the plea of charity? Is it not a plain inference that there was a previous arrange-

ment? If then such was the case—if at the time of the purchase of these bonds, if at the time of making these declarations he was himself guarded and secure, then all good inferences fail, and we must draw such as we think proper from the evidence. There is no direct proof of a conspiracy, the law requires none, we are to infer it from the acts of the parties. And what is the inference in this case: gentlemen it is your province to draw it. I have dwelt somewhat minutely on this case, but I felt bound so to do, as I consider it a cardinal point in the future transactions.

We come now to the Morris Canal—the judge here adverted to the operations carried on between the Morris Canal and Fulton Bank. It appears that through the agency of Mr. Vermilyea, $250,000 more of Life and Fire bonds were set afloat. Vermilyea draws up a resolution as an officer of the board of the Morris Canal. General Swift was Vice-President of the Life and Fire, and he and Vermilyea formed a resolution at the Morris Canal. Governeur also signed the resolution but it was unexplained to him, and I have no doubt he states the truth. This resolution was got, not by calling the whole finance committee together to consult upon such an Herculean operation. It was signed in part and taken off quietly, and then without waiting for the signatures of the others, stock of the Morris Canal was issued for 2,500 shares. I shall not detain you. Two or three days after, Mr. Bayard signed it, and in about a week Mr. Eckford did the same. The finance committee were kept in ignorance. Nobody but the immediate actors knew any thing of it till after the failure of the Life and Fire; nor was it entered in the book. Why all this mystery? Through the instrumentality of a committee of the

Fulton Bank, [on the same day,] composed of two of the defendants, the exchange for Fulton stock took place. On the same day it passed into the hands of W. R. Thurston, and likewise, on the same day, into the hands of Messrs. Catlin, Fleming and Worth, for loans effected by Mr. Barker.

It has been said in rebuttal of an inference of conspiracy drawn from these transactions, that if agents commit a fraud, when acting within the scope of their powers, their acts are legal. It is true that these acts do bind their principal, as between them and third persons; but it is no defence against a charge of conspiracy alleged against them by such principals for the fraud.

Was the Fulton Bank informed how this Morris Canal stock was obtained? Vermilyea delivered these certificates to the Fulton Bank, and was acquainted with the history of it; did he give this information, and did he inform the Bank what this stock would be worth on failure of the Life and Fire? If not, there was a most material suppression of the truth. Vermilyea managed this transaction; Davis signed the Life and Fire Bonds, and it was his duty to have known for what use they were intended. And it is shown to you that the Morris Canal stock was transferred to the Fulton Bank, in pursuance of a prior arrangement with which Mr. Barker was acquainted, as appears by his hand-writing on an interlineation on one of the papers.

I will now turn your attention to the Tradesmen's Bank. It appears that the bank was in a flourishing condition, and had a large capital paid in. An offer was made to purchase the bank, by some person who does not distinctly appear. That offer was 14 per

cent above the market price. Now, I put it to you, what honest use can be made of a monied institution that will warrant an individual to make such a sacrifice as 14 per cent above the market price? By this operation the bank direction was changed—it fell into the hands of the purchaser. How was this power made use of? Within the period of ten days, they sustained losses to the amount of $100,000; in that short time the hypothecation was cancelled for $242,000. Is it not fairly inferrable that it was fraudulent?

The next question is, whether there were not more of them than one? whether there were not a company? It appears that an application was made to Mr. Riker on the subject. The ten per cent. was paid in Life and Fire bonds, which were signed by Mr. Davis. It appears that a Life and Fire bond to the enormous amount of $262,000 passed into the Tradesmen's Bank, a sum only short by $140,000 of the whole capital.—We have heard so much of fraud, so much of iniquity, that when we hear of a conspiracy like this, it passes by us like a summer's cloud. Our sensibilities are blunted, our senses deadened, and we think of it but as a common and ordinary transaction. But, gentlemen, imagine a bond of this enormous amount going into the bank, and for what—what use was made of it? To set afloat 4840 shares of the capital stock of that bank without the authority of its directors. It performed its office. The 800 shares were made out to Sturtevant, and passed the same day to Mr. Barker. Judge Edwards then stated the evidence regarding Mr. Barker's being the supposed purchaser of that bank—his solicitude when he heard of the injunction. He also adverted to the openness with which Mr. Barker delivered back the 800 shares as being somewhat

exculpatory. After this, the Judge proceeded to remark on the evidence respecting Spencer and Brown. He dwelt particularly on the draft of the Greene County Bank for $40,000, which was paid by the Fulton Bank, at the instance of these two officers, without the consent of the proper authority. He then alluded to their overdrawings, and in a few words to the general parts of the indictment.

Gentlemen of the Jury.—The features of this case present such an endless variety, that were I to address you on every point, my remarks would be interminable. This case is one not only of interest to the public feeling, but also important to public justice. The duties you are called upon to perform are arduous and unpleasant: those of the court are equally so.—The administration of criminal justice is always a sorrowful task: they are the decrees of Heaven, formed alike to protect the innocent and to bring down vengeance on the head of the evil doer. We come not here to indulge in our passions—to gratify our prejudices, but under our oaths, under the sanction of Heaven, to render justice where justice is due. With the consequences you have nothing to do. If you find them guilty, if the law falls severely on them, and through them on those connected by dear and tender ties with them, we can afford them nothing but our sympathies, our duty must still be performed.—Much has been said here of public prejudice, of public opinion, that the public mind is biassed against these defendants. If so, if you, gentlemen, in common with others, have indulged such feelings, I conjure you to dismiss them. Bear in mind that the law does not know the face of man in judgment. Suffer not, therefore, your minds to be swayed by what you

have heard or read, but fearlessly and impartially deliver in your opinions according to the evidence. I cannot add more, but in dismissing this cause from my hands, it is to me a source of much gratification, that it is to be committed to the most intelligent and respectable jury I ever saw: men who will rise superior to every consideration: too intelligent to be deceived, too honest to be seduced, too firm to be intimidated. If you are satisfied, beyond all doubt, that these defendants are guilty, I trust that you will say so, and show to the world that in this land of law and liberty, no man's head, however elevated his standing, is higher than the law. If you entertain fair and reasonable doubts as to their guilt, for Heaven's sake acquit them—the hand of justice delights not in the blood of the innocent—and if men are made to suffer on evidence not satisfactory, it would be far from meeting the ends of justice. If I have, in the course of my remarks, erred in my statements of the testimony on the side of public justice; if, above all, I have erred against the defendants, I pray you to correct me. I have devoted myself fully and frankly to this trial—I have now unbosomed myself to you: I hope that I have done my duty to the people on one side, and justice to the defendants on the other. Give to the defendants the benefit of every reasonable doubt, but if you believe them guilty, in the name of Justice, in the name of Heaven, say so.

After a short absence, the jury returned a general verdict of guilty against all the defendants, when Mr. Barker rose and addressed the court, and requested that the jury might be allowed to state in what particular they considered each of the defendants guilty, in order that the world might know whether they were

considered guilty of all, or only a part, of the charges preferred against them. His honor Judge Edwards, refused the request, saying, "the verdict speaks for itself." The parties then notified the court that they should take measures for a re-hearing, which measures would be communicated to the court at the proper time, and the court stated that they would meet again on the Friday following for the purposes of business. On that day the parties appeared, and expressed their intention of applying for a new trial, and Mr. Barker informed the court that his case had reached such a state of calamity that he should hand it over to counsel, and that he had employed Mr. Anthon to take charge of it, and hoped to procure the assistance of his venerable friend, Mr. Emmet; that he had found himself, unexpectedly, in collison with professional men, which furnished an additional reason for his not taking part in discussing matters purely technical or professional, as he might have to war with the whole of them, but that before he gave up his case to counsel, he wished the court would inform him if his application for a new trial could be conducted separate and apart from the other defendants. He now wished, as he always had done, to stand or fall by himself on his own merits; but if that could not be done without jeopardizing the interests of the other defendants, he should allow his name to be used in connexion with theirs, but not otherwise. The Judge replied, that the court could not give an opinion, their duties not being of an advisatory nature, but that if a motion was made to the court they would decide on it. Mr. Barker then stated that he was under the impression that his honor did not, at the time of making his charge, fully comprehend or recollect the evidence that had been given,

and that before any further decision was made, he wished to be allowed to point out in what particulars. That he, Mr. Barker, was tired of making speeches to no purpose, and did not intend again to appear in that way before the court, and for that reason he asked if it would be proper to present his views in writing on the subject. Having understood the court to assent thereto, he withdrew, and on the next Tuesday presented the following documents and memorial:

DOCUMENTS.

City and County of New-York.

COURT OF OYER AND TERMINER.

Thomas Vermilyea, George W. Brown, Mark Spencer, Matthew L. Davis, and Jacob Barker,

ADS.

The People.

City and County of New-York, ss.

James W. Bleeker being duly sworn, doth depose and say, that on the eighteenth day of November last past, subsequent to the first trial in this cause, he was attending as a juror in the execution of Writs of Enquiry with Abraham B. Mead, before the Sheriff of this City, that the said Sheriff observed to the said Mead, that he, Mead, had been drawn on the general panel of jurors for the Court of Oyer and Terminer: that the Sheriff remarked, that Barker had attended at the drawing of the general panel of jurors, and "said that he would as lieve have him for a juror as any other man." The said Mead immediately replied, in the presence of this deponent, to said Sheriff, "that he believed that the defendants were all guilty, and

he should convict them if he was drawn on the jury." This deponent further saith, that the said Mead was one of the jurors who were drawn for the trial of the above defendants, and returned a verdict of guilty.

JAMES W. BLEEKER.

Sworn before me, this 2d day of December, 1826.

W. H. BELL, Commissioner.

City and County of New-York.

COURT OF OYER AND TERMINER.

Thomas Vermilyea, George W. Brown, Mark Spencer, Matthew L. Davis, and Jacob Barker,

ADS.

The People.

City and County of New-York, ss.

Robert Bogardus of the city of New-York, being duly sworn, saith, that he attended several days during the first trial of this cause as a witness on behalf of the people, in September and October last: that he saw Andrew S. Norwood there, that deponent during said trial, observed to said Norwood, "he appeared to be attentive to the trial, and asked him what he thought as to the guilt of the parties of a conspiracy with an intent to defraud," that he replied, "that he believed they were guilty, and if he was a juror, should require but very little evidence to convict them, for that he believed them all guilty:" that the deponent mentioned, "from his knowledge of two of the defendants, he the deponent, should, if a juror, require strong evidence of their guilt," to which Mr. Norwood replied, "that he should, if a juror, require strong evidence of their innocence, or would convict them all;" and made use of several very strong expressions, showing that

he had made up a fixed opinion against the defendants; and in the course of the conversation, he declared "that he thought they ought to be punished first and tried afterwards," or words to that effect: that sometime after the jurors were sworn and had taken their seat at the present court, the deponent, on entering the court, discovered that said Andrew S. Norwood was one of the said jurors, this deponent immediately expressed his surprize thereat, and mentioned his reasons for the same, and openly declared his opinion, that from what the said Norwood had expressed to the deponent, he considered him as an improper juror, and disqualified from serving as a juror in the cause; and this deponent further saith, that he has been personally acquainted with Mr. Norwood for a number of years, that he is, as this deponent always considered very determined in his opinion when once formed; and this deponent further saith, that to the best of his recollection, the opinion thus expressed by Mr. Norwood was within a few days after the said first trial had commenced.

ROBERT BOGARDUS.

Sworn before me, 2d December, 1826.

P. A. COWDREY, Commissioner.

City and County of New-York.

COURT OF OYER AND TERMINER.

Thomas Vermilyea, George W. Brown, Mark Spencer, Matthew L. Davis, and Jacob Barker,

ADS.

The People.

County of Columbia, ss.

Seth Jenkins, of Columbiaville, being duly sworn, saith, that he was in the city of New-York in the early

part of the month of November: that he boarded at the house where Rufus Davenport lodged. It was mentioned to the deponent that Rufus Davenport was summoned as a juror to try those that were indicted and tried at the last Court. In conversation with said Davenport, I asked him if he was summoned as a juror for the next Court, he informed me that he was: much conversation was had between said Davenport and this deponent, in the course of which, I asked him what he thought of the parties lately tried, he said, "he believed they ought to have been convicted." I then asked him "if he had read the reported trial and the testimony of the witnesses," he replied "he had not;" I then asked him "if he had attended the trial," he replied "he had not;" I then asked him "how he had formed such an opinion," he, Davenport, replied, "that from his knowledge of the nature of the business, he believed they ought to have been convicted." The deponent then observed to him, the said Davenport, "that as he acknowledged his prejudices were so strong against the accused he ought not to sit on the jury, as he would not be able to give an unprejudiced verdict, however honest he may believe himself to be," he replied, "he believed he could;" and to this deponent, appeared by his manner, to have a strong desire to be on the jury. In the course of the conversation had with the said Davenport, he said, "that some of the late jury that tried the persons indicted ought to have been convicted themselves."

SETH JENKINS.

Sworn before me, this 5th Dec. 1826.

A. L. GORDON, Recorder of Hudson.

City and County of New-York.

COURT OF OYER AND TERMINER.

Thomas Vermilyea, George W. Brown, Mark Spencer, Matthew L. Davis, and Jacob Barker, impleaded.

ADS.

The People.

City and County of New-York, ss.

Philip W. Engs of the city of New-York, being duly affirmed, saith that on the day previous to the failure of the Hudson Insurance Company, he was present when William R. Cooke, one of the jury, in the late trial of the above case, contracted for the purchase of a Hudson bond, in connection with two other persons for $1000, for which he agreed to pay the next day, five hundred dollars, and further deponent saith not.

P. W. ENGS.

Affirmed to this 14th day of December 1826, before me,

GEORGE D. COOPER, Commissioner.

City and County of New-York.

COURT OF OYER AND TERMINER.

Jacob Barker, Thomas Vermilyea, Matthew L. Davis, George W. Brown and Mark Spencer, impleaded with Henry Eckford, Joseph G. Swift and William P. Rathbone,

VS.

The People.

City and County of New-York, ss.

I, Jacob Barker, solemnly swear that I, this day accidently met Mr. John Fream, one of the jury in this cause. He told me, of his own free will, that the case was so complicated, and so many parties and

circumstances were brought before the jury, that no man on earth could retain the whole, and that so far as I was concerned, he, and all the jury were of the opinion, that I believed myself innocent, I replied, "you certainly then, were bound to have acquitted me." Are you certain that all the jury said so? He answered, "nearly all, if not all, but we could not acquit you on that account we did not know how to seperate you from the others."

JACOB BARKER.

Sworn to, this 2d day of December, 1826,
before me,
O. H. HICKS, Commissioner.

City and County of New-York.

COURT OF OYER AND TERMINER.

Thomas Vermilyea, George W. Brown, Mark Spencer, Matthew L. Davis and Jacob Barker.

vs.

The People.

City and County of New-York, ss.

I, Jacob Drake, solemnly swear, that in passing down Broadway this day, I met with Messrs. John Fream and Jacob Barker, who were conversing together in relation to the recent verdict against the latter by the jury, of which the former was one, when Mr. Barker desired Mr. Fream to repeat what he had been saying, and Mr. Fream stated that he, as well as most of the jury, was of the opinion that Mr. Barker believed himself innocent.

JACOB DRAKE.

Sworn to, this 2d day of December, 1826,
before me,
O. H. HICKS, Commissioner.

City and County of New-York.

COURT OF OYER AND TERMINER.

Thomas Vermilyea, George W. Brown, Mark Spencer, Matthew L. Davis, and Jacob Barker, impleaded with Henry Eckford, William P. Rathbone and Joseph G. Swift.

ADS.

The People.

City of New-York, ss.

William B. Townsend, of the City of New-York, being duly sworn saith, that some time previous to the commencement of the present term of this court, he was in conversation immediately preceding the first trial, in relation to the indictment of these parties and others, with Isaac Collins, one of the jurors who found a verdict of guilty against the defendants tried, who stated to him that he believed the parties guilty, that he thought they ought to be convicted, or words to that effect; his expressions against them were very strong, and induced this deponent to believe that his feelings were against the defendants.

WILLIAM B. TOWNSEND.

Sworn, this 4th day of December, 1826, before me,

O. H. HICKS, Commissioner.

City and County of New-York.

COURT OF OYER AND TERMINER.

Jacob Barker, Thomas Vermilyea, Matthew L. Davis, George W. Brown and Mark Spencer, impleaded with Henry Eckford, Joseph G. Swift and William P. Rathbone.

ADS

The People.

City and County of New-York, ss.

Samuel Leggett, being duly affirmed, saith that he was this day in conversation with William R. Cook,

one of the jurors, in the above entitled cause, when the said Cook, stated that he and several others of the jurors, believed that Jacob Barker considered himself innocent of the charges for which he had been tried, that when he agreed to a verdict against the parties tried, he did not understand the law to require proof of a fraudulent intention before the parties were liable to be convicted, that Andrew S. Norwood, one of the jurors, suggested that no conversation should take place among the jury during the trial touching the evidence or the conduct of the parties accused, until after the Judge submitted the cause to them, and that no conversation took place among them on those subjects, until after the Judge's charge, but in place of such conversations, they had various amusements, that the jury had music, cards and wine, the various instruments enumerated by the said Wm. R. Cook, were as follows : the flute, the flageolet, the guitar and violin, and that the jury, or some of them did play cards during their retirement.

SAMUEL LEGGETT.

Affirmed to, this 9th day of December, 1826.

D. Evans, Commissioner, &c.

PETITION.

Jacob Barker respectfully represents to this honourable court, that among the reasons for their granting a new trial, he requests them to consider the complicated nature of the case which has been the subject of inquiry, insomuch that the human mind is scarcely capable of comprehending it, without a more thorough knowledge of such matters than usually falls to the lot of ordinary individuals ; that the jury, so far from

examining carefully every fact and circumstance every night when the court adjourned, and discussing the same among themselves, so that by the interchange of their ideas they might have understood and kept every branch separate in their minds, studiously avoided all conversation among themselves on the subject, as they informed the court they had done, after his honor, Judge Edwards, had delivered the case to them; and thus they could scarcely be expected to remember much more of the particulars of this very complicated case, than was dilated on in the speech of the District Attorney, and in the charge from the honourable court. The jury during their retirement, partook of amusements and indulgences calculated to incapacitate the mind from that sober reflection and close investigation which the solemnity of the occasion so imperiously required, which in the opinion of your petitioner, was very injurious to the parties on trial. As an evidence of a previous bias of the mind of one of the jurors, your petitioner asks leave to refer this honourable court to 4 Cowen's Reports, page 382, in the case of the people of the state of New-York, at the relation of Jacob Barker and others, against Abraham B. Mead and others, in which this petitioner and others charged fraud on Abraham B. Mead, one of the jurors, and others, in relation to the election of directors for the North River Bank, which charge was fully sustained by the Supreme Court. The reason for your petitioner not referring to it on the forming of the jury was, that he had hoped that the said Abraham B. Mead had emancipated his own mind from the influence of that quarrel; but from the affidavits presented, your petitioner has been concerned to find, since the trial, that not only the said Mead, but that

several of the other jurors, appear to have prejudged the case before they were drawn.

IN SUPREME COURT, August Term, 1822.

The People of the State of New-York, at the relation of Jacob Barker and others,

against

Abraham B. Mead and others.

Samuel A. Talcott, Attorney General of the People of the State of New-York, moved on Tuesday the eighth instant, for leave to file an information in the nature of a *quo warranto* against the defendants above named, who claim to be directors of the North-River Bank of the city of New-York. This motion was founded on a bill in Chancery recently filed against the defendants and others, by James D. P. Ogden, Jacob Barker and others, and on the answers to that bill, and also on an affidavit showing that the relators above named are stockholders in the North-River Bank.

On Friday, Chief Justice Spencer delivered the opinion of the Court, to the following effect:—

"These applications being generally found on the *ex parte* affidavit of the relators, it has of late years been usual in the English Court of King's Bench and in this Court, to afford the defendant an opportunity of being heard against granting leave to file the information. A rule to show cause is, therefore, generally entered; and leave is afterwards granted or refused, as circumstances shall appear upon the cause shown. In the present case, the application is for leave to file the information in the first instance. There is no doubt that the Court are bound to exercise a reasonable discretion on the subject; and this cause comes before

us in a manner so peculiar, that we think it proper to except it from the general rule. The application does not rest upon a mere *ex parte* affidavit. The evidence placed in our hands comes from the defendants themselves, or from a source most favourable to them. We have the sworn answers of the defendants to a bill in Chancery, filed in relation to the very election complained of. We have also the answers of the inspectors of that election. Upon a rule to show cause, nothing could be alleged by the defendants against granting leave to file the information which is not already urged on their part, in the papers presented to the Court. We have looked into the answers, and we find the defendants and the inspectors admitting a state of facts, which not only render it proper to grant leave as applied for, but which seem to us imperiously to require it at our hands. To give time under such circumstances, would be an abuse of the discretion vested in this Court. We will briefly advert to a part of the case as admitted by the defendants and inspectors. A controversy existed among the stockholders of the bank, a portion of whom were desirous to effect a change in the direction. A few days before the election, a by-law was passed by the board of directors, of which board most of the defendants were members and then present, authorizing any stockholder to challenge the votes offered at the election; and if supported by affidavits or other probable cause, to the satisfaction of the inspectors, that they might then require the person whose vote should be challenged, to make in oath answer to the cause of challenge, the sufficiency of which should be determined by the inspectors; and if such oath was refused, that the vote should be rejected. Under this by-law, votes given

upon the proxies of several persons, who appeared, from the books of the bank and the certificates of the cashier, as stockholders to a large amount, were challenged on the ground that the persons in whose names the stock stood, and who held the certificates of the bank, were not the exclusive owners, but that some third person or persons had an equitable interest therein. This was considered by the inspectors as good cause of challenge; and the persons whose proxies were thus objected to, were required notwithstanding the most urgent remonstrance to the contrary, to make affidavits in writing in answer to these allegations, and to answer, under an oath prescribed by men who did not themselves act under the solemn obligations of an oath, to various verbal interrogatories, and to submit to a sort of inquisitorial examination at variance with the fundamental principles of our civil and political institutions, at the pleasure of the inspectors. In this manner, votes upon a great number of shares were entirely disregarded by the inspectors. It is evident, from the answers, that if all the votes received into the hands of the inspectors from persons duly authorized to give such votes, had been estimated by the inspectors, that the result would have been different from that declared by the inspectors; as, in such a case, the persons whose seats are now contested could not have been certified to have been elected.

Without entering any further at this time into the facts disclosed, we are unanimously of opinion, that the by-law, and the proceedings under it at the election, were most illegal and reprehensible. The act of incorporation provides, 'that each stockholder shall be entitled to one vote on each share of the

stock of the bank, which he shall have held in his own name at the least fourteen days previous to the time of the voting.' (*Sess.* 44, *ch.* 146, § 8.) Further than this, the inspectors had no right to inquire, as it was not competent for the directors to pass any by-law at variance with the positive provisions of the act incorporating the bank. We therefore feel ourselves called upon to grant the motion; more especially as the statute contemplates, in cases of this sort, the most speedy and effectual proceedings which a due regard to the rights of parties and the proper administration of justice will permit."

Leave granted to file the information *instanter*.

Counsel for the plaintiffs, { *S. A. Talcott*, Att'y Gen. / *Benjamin F. Butler*.

Counsel for the defendants, *Samuel Jones*.

Your petitioner begs leave also, to refer to the accident which deprived him of having his challenge to Mr. Norwood referred to triers. He considered Andrew S. Norwood prejudiced against him, and for that reason, it was his intention to have investigated the same before triers; the other defendants also had objections on which they challenged him, and the same was submitted to the court, who decided that there was not sufficient cause for the challenge. Your petitioner did not take part in such challenge as he wished to keep his cause as separate from that of the other defendants as possible, but as soon as he supposed their challenge was disposed of, he did challenge Mr. Norwood, and requested to have the same submitted to triers; in the mean time, the said Norwood was sworn as a juror, and this application was refused.

His being sworn was so rapid, and the excitement among the parties so great, that your petitioner did not notice the clerks proceeding to swear said juror, and if he had, he was not sufficiently acquainted with such proceedings, to have known that such swearing would deprive him of the right to have his challenge investigated, your petitioner being of the opinion, that if he urged his objection before another juror was called, it would be in full season. But the court decided that the rule was absolute, and therefore your petitioner had no alternative but to submit to be tried by the said Norwood. His reasons for the objection were that he had been mainly instrumental in removing the said Norwood from the direction of the National Insurance Company some years since, at which the said Norwood took great offence against your petitioner, and the said Norwood subsequently gave testimony in a cause before Judge Livingston, touching the true rule for settling damages on bills of exchange, in which your petitioner had a deep interest.

His testimony was decidedly in favour of the principle your petitioner was contending for, but of his interest therein the said Norwood may not then have been apprised, but before he left the judge's chambers, the interest of your petitioner appeared manifest, and also that the opinion of the judge was against the principle contended for by your petitioner. In the course of the investigation, and after the said Norwood had retired, the judge became most thoroughly convinced of the correctness of the views taken of the subject by your petitioner. The hearing however, was adjourned over until the next morning, when on assembling at the judge's chambers, the said Norwood was there, and requested permission of the judge to correct

his testimony, alleging that he had discovered that he was all wrong, and came back for the purpose of requesting the judge to consider it to have been given on the other side.

The judge replied, that he thought him wrong when he heard him give his testimony, but that he now knew he himself was wrong at that time, and he forthwith decided the cause in favour of your petitioner. And further the close attention given by the said Norwood to the former trial, in the opinion of your petitioner, indicated so deep an interest for the issue thereof, that your petitioner could not consider him an impartial juror.

Your petitioner begs leave respectfully to refer to his honour Judge Edward's charge, in which he thinks the judge either mistook or did not fully comprehend all the testimony in the case. Your petitioner has no recollection, that a single witness testified that the Life and Fire Insurance Company was largely or at all indebted to the Dutchess County Insurance Company, such indebtedness was more than once spoken of in the charge. His honour judge Edwards, also stated that Mr. Barker was intimately acquainted with the concerns of the Life and Fire Insurance Company; your petitioner has no recollection of a single witness saying more than that he was well acquainted with the amount of money the company wanted from day to day for several months immediately before the failure. The clerks testified, that when Mr. Barker called the only question he put was, how much money do you want to day? which they said Mr. Barker repeated almost daily for a month or two; that when the company wanted money they were sent to Mr. Barker to borrow it, that sometimes he furnished it and sometimes

he could not, and then they got it elsewhere; that the money borrowed the clerks deposited in the banks to the credit of the company, and that Mr. Barker had no knowledge of the manner in which the money was disposed of after it was thus deposited; for this money the company gave Mr. Barker their checks on the Fulton bank, for equal amounts, to be retained by him until the company notified him of their being good, and that of these checks a part had been settled, and a part had remained unpaid in the hands of Mr. Barker; the balance due him on that account was one hundred thousand dollars. Mr. Hoffman, the receiver in chancery, gave similar testimony as to the nature and extent of this indebtedness, and added, that on a comparison of the books of the company with that of the Fulton bank, the amount of deposits and of the checks remaining in the hands of Mr. Barker unpaid, precisely agreed in each item. Mr. Halleck also testified to your petitioner's lending the said company large sums of money, and no witness to the recollection of your petitioner attempted to impeach the correctness of the testimony of these four witnesses, and no circumstance occurred to his knowledge during the trial that went to question the said indebtedness, hence your petitioner supposed, when he heard the judge say to the jury that the proof of such indebtedness was not as satisfactory as it should have been, that the aforesaid testimony had escaped his recollection. Your petitioner could not but think his honour was also mistaken in the testimony that had been given, when he said the books of the Life and Fire Insurance Company were open to Barker's hands, as both the clerks testified that the Ledger, and all the books of accounts, were kept in a back room, up stairs; and no one pre-

tended that your petitioner was ever in that room, nor that he ever went up stairs, on the contrary, both clerks testified that they were instructed by Mr. Davis and by Mr. Vermilyea, not to allow any one to see the books, and in particular, not to allow Mr. Barker to see them; that he never attempted to look at the Ledger or books of accounts; if he had done so, they should not have allowed him to have done it sooner than they should have allowed that privilege to any other person. His honour judge Edwards charged the jury that it was presumed Barker examined the books before he lent them money, a conclusion so entirely at variance with the practice of money lenders, that your petitioner begs leave respectfully to say, that in his opinion such a case scarce ever occurred. In recapitulating the testimony of Mr. Garniss, his honour judge Edwards mentioned, that he had said Mr. Barker told him, Garniss, that the bonds were good. In that your petitioner considers there was also a mistake. Mr. Garniss said that Mr. Barker reluctantly submitted to allow him one and a half per cent per month discount, in addition to the interest, observing that it was too great a sacrifice to make, but that he must have money, and therefore accepted his offer. Allowing twenty-four per cent per annum for money does not in the opinion of your petitioner, of itself warrant the conclusion, that he recommended the securities on which it was obtained as being good. When his honour Judge Edwards delivered his charge to the jury, he was under the impression that your petitioner became a more extensive purchaser of the bonds after the transfer of the eight hundred shares of Tradesmen's bank stock, when in point of fact, your petitioner did not, as principal or agent, purchase a single bond subsequent to the

receipt of that stock, nor did a single witness, to the knowledge of your petitioner, even intimate that he had done so.

Your petitioner is very far from intimating that there was any fraudulent concealment of the situation of the affairs of the Life and Fire Insurance Company, or that any thing was ever said or done by the officers of that company with an intention to deceive, yet if in these particulars he is mistaken, the motives of those officers to conceal from and to deceive him were more apparent than to mislead or deceive any other person, as it cannot escape the observation of every person acquainted with money matters, that nothing would be so likely to alarm a money lender and prevent his supplying the money wanted, as for him to be made acquainted with any fact which would lead him to suppose the borrower was in danger of insolvency. His honor Judge Edwards stated, that your petitioner was previously acquainted with the transaction about the Morris Canal and Banking Company stock, as appeared by a memorandum *interlined* in his handwriting. The memorandum thus interlined, your petitioner thinks, referred to the alleged negotiation for aid for the Hudson and United States Lombard Companies, and not to the Morris Canal and Banking Company stock, and was drawn upon the 11th or 12th of July, two months subsequent to the transfer of the Morris Canal stock. The one supposed by the District Attorney to relate to that affair is without date, and in the handwriting, but, he believes, not interlined by your petitioner, and in the opinion of your petitioner furnishes no legal inference as appertaining thereto, but as your petitioner has no copy of those papers, he requests that they be referred to by the

honorable court. As far as he recollects from their slight inspection in court, they are as follows:

1st. A contract of Messrs. Spencer and Brown, dated January 20th, 1826, for the sale of 610 shares of Fulton Bank stock, held by your petitioner at that time, as has been proved by Messrs. Tracy, Slidell, Drake, and others, deliverable at the option of Messrs. Spencer and Brown, at any time within six months.

2d. A memorandum in the handwriting of Jacob Barker, dated 21st of July, 1826, simply proposing to fix a price for that stock, the parties having failed and being unable to take it.

3d. A contract between Mr. Eckford and Messrs. Spencer and Brown, dated 10th of May, 1826, in the handwriting of William P. Rathbone, for the exchange of 2000 shares of the Fulton Bank stock for the 2500 shares of the Morris Canal stock, on the back of which there, is in the handwriting of Jacob Barker, a very innocent and a very prudent clause suggested to be added.

Your petitioner respectfully suggests, that the inference is, that the memorandum on the back, was, in point of fact, made subsequent to the date of the contract, and as that exchange took place on the day of the date of the contract, your petitioner is of the opinion that it did not furnish evidence of any previous knowledge on his part. Is it unreasonable to suppose that this advice was given after the Fulton Bank had rejected the original contract, when Mr. Brown took it away to have a new one drawn by Mr. Eckford, and this, it is in proof, was long after the stock had been exchanged.

4th. A memorandum, without date, in the handwriting of Messrs. Spencer, Brown, Barker and Rathbone, of a negotiation for the relief of the Hudson and United States Lombard Companies.

5th. A more formal memorandum of the same affair, dated 12th July, in the handwriting of William P. Rathbone, in which memorandum one or two words are interlined in the handwriting of Jacob Barker, from which it clearly appears, that the said memorandum, without date, was written on or about the same day.

6th. A memorandum in the handwriting of your petitioner, without date, of $400,000 worth of stock, without one word or circumstance which indicates to what use it was to be applied, or for what purpose it was intended.

The only thing relied on by the District Attorney, to connect this memorandum with the 2000 shares of Fulton Bank stock, was the report of the committee of the Fulton Bank on the 6th of July. When Spencer and Brown were obliged to take up their Fulton stock by the unanimous vote of the Board of Directors of the Fulton Bank, it being unlawful for that Bank to lend money on its own stock, there certainly was no wrong in their endeavouring to get other stock that would be acceptable.

The $400,000 in this memorandum, is made up of five different stocks, all supposed to be good. and about three-fourths of which still continue good.— There certainly would not, in the opinion of your petitioner, have been any wrong in making the exchange, and because that negotiation, if such a negotiation there was, fell through, and another totally different, between different parties, was consummated for a part of the amount, an inference is attempted to be drawn, that I was a party thereto. This was not the case, and if it had been, your petitioner cannot perceive that there would have been any wrong in it, unless he had known that the objectionable

certificates had been procured from the Morris Canal, which it has been proved over and over again, that he did not know any thing about. This honorable court will find that these memorandums, or one of them, speak of vacancies in the direction of the Fulton Bank. Now, as such vacancies did not take place until on or about the 12th of July, as appears by the minutes of that Bank, offered in testimony on the part of the people, it seems perfectly clear that these memorandums must have been made at that time, and could not have related to the Morris Canal stock. It is to be feared, that however desirous the jury may have been to get at the precise nature and extent of the testimony given, that they were from its extremely complicated character led into very great errors, some of which would, in all probability, have been avoided, had the books and accounts, with the acts of incorporation, been fully explained to the jury, which would have been done, had it not been agreed on all sides, in the early part of the trial, that the jury would take the same with them to the jury-room, which your petitioner believes was agreed to at the suggestion of Andrew S. Norwood, one of the jury; and although they did so take them out, yet from the shortness of the time they were out, it is apprehended that they could not have made such an examination thereof, as would have enabled the best book-keeper in the world to have understood therefrom the provisions of the acts of incorporation and the state of the affairs of the company; all which your petitioner respectfully asks leave to submit to the consideration of the honorable court.

JACOB BARKER.

New-York, 11*th December*, 1826.

RESOLUTIONS.

MERCANTILE INSURANCE COMPANY OF NEW-YORK,

12th mo. 4th, 1826.

At a meeting of the Directors of this Company, on motion of Henry D. Sedgwick, Esq. it was this day unanimously resolved, that a committee be appointed to investigate the books and affairs of this company, and the conduct of Jacob Barker in relation thereto, as Assistant President, whereupon Benjamin Marshall, Francis Thompson, and Robert H. Bowne, were duly appointed to perform that servive.

12th mo. 6th 1826.

The board of Directors again assembled, when the aforesaid committee made the following report:

Report of the committee appointed by the Directors of the Mercantile Insurance Company of New-York, to examine the books and effects of the company, to investigate the conduct of Jacob Barker, in relation to the performance of his duties as assistant president of the said company, and whether or not any thing has occured to diminish the confidence reposed in him by the directors.

Your committee have carefully examined the situation of the books and accounts of the company, as well as their securities and effects, and report, that the books have been regularly kept, and a balance sheet made out every month for the inspection of the directors, which, on a comparison with the books and securities on hand, exhibits a correct and concise view

of the situation of the affairs of the company, and that the conduct of Jacob Barker, throughout has been marked with skill and fidelity to the company, and in obtaining payment for the debt due from the Life and Fire Insurance Company, he did not in the opinion of this committee, do more than he was bound to do in the faithful discharge of the duties of his office. Your committee is of opinion, that if he had done less, he would have been wanting in his duty to the stockholders of this company; and, so far as your committee has been able to discover, nothing has occured to diminish the confidence hitherto reposed in said Jacob Barker. That the Life and Fire bonds sold by him on the 9th and 10th of June, as testified by John P. Garniss, were the property of this company, sold for their account, and the money received therefor on those days.

FRANCIS THOMPSON,
BENJAMIN MARSHALL,
ROBERT H. BOWNE.

On reading the report of the Committee appointed to inquire into the conduct of Jacob Barker—

Resolved, unanimously, That we approve of and accept the said report, and that the same be entered on the book of minutes of the Board of Directors.

Resolved, unanimously, That the Secretary of this Company tranmit a copy thereof, with these resolutions, and of the resolution appointing the committee, to each of the stockholders of this company, signed by the President and Secretary of this meeting.

WILLIAM R. THURSTON, *President.*

THOMAS L. WELLS, *Secretary pro tem.*

DUTCHESS COUNTY INSURANCE COMPANY,

New-York, December 6, 1826.

At a meeting of the Directors of this Company, held at the Company's Office, this day.

The Committee appointed at the last meeting to inquire into the conduct of Jacob Barker, as an officer of this Company, and as to the correctness of the reported indebtedness of the Life and Fire Company to this Company, made the following Report:

"The Committee appointed to inquire into the conduct of Jacob Barker, as an officer of this Company, respectfully Report:—That after a careful examination of the published testimony, given in the recent trials, and comparing the same with all the information we could obtain, and with our knowledge of the facts in the case, we see no reason to withdraw from Jacob Barker the confidence hitherto reposed in him by the Directors of this Company:—That he appears always to have watched over the interests of the Stockholders with scrupulous fidelity, and to have used his best exertions for their interest:—That the Books of the Company have been always regularly posted, and a monthly statement uniformly made for the inspection of the Directors:—And that the alleged indebtedness of the Life and Fire Company to this Company, as mentioned in the report published in the newspapers of Judge Edwards' charge to the jury on the late trial, probably originated in mistake, as no such indebtedness exists.

WILLIAM ISRAEL,
ABRAHAM BELL,
JOHN CLAPP.

The above Report being read:

Resolved, unanimously, That the same be adopted and entered on the minutes.

Resolved, unanimously, That the confidence of the Directors of this Company, in Jacob Barker, their Assistant President, remains undiminished.

Resolved, That the President and Secretary be requested to sign the proceedings of this meeting, and furnish Jacob Barker with a copy thereof.

A true copy from the minutes.

STRONG STURGES, President.

F. G. HALLECK, Secretary.

At a meeting of the Board of Directors of the Western Insurance Company of the Village of Buffalo, held on the 7th of December, 1826, the annexed Report was presented by the Committee appointed at a previous meeting:—

Whereupon, it was

Resolved, unanimously, That the same be accepted, and that this Board fully unite with the said Report.

Resolved, unanimously, That a copy of the same, and of these Resolutions, signed by the President and Assistant Secretary, on behalf of this Board, be presented to Jacob Barker.

NATHAN COMSTOCK, President.

A true copy from the minutes.

THOMAS J. GARDNER, Assistant Secretary.

The undersigned, a Committee appointed at a meeting of the Directors of the Western Insurance Com-

pany of the Village of Buffalo, to investigate the conduct of Jacob Barker, the Assistant President of the said Company, respectfully Report:—

That his agency in the management of the affairs of this Company is marked with fidelity, and his unremitting exertions for the interest of the institution, entitles him to the unabated confidence of the stockholders, and is attended with no circumstances calculated to excite a suspicion of that honesty which should characterise mercantile transactions—nor should this confidence be diminished in the estimation of your Company, by the recent investigation before the Court of Oyer and Terminer.

Your Committee find that eight hundred shares of the stock of the Tradesmen's Bank, were transferred to Seth Sturtevant, a clerk of this Company, on or about the 12th of July last, on which a loan was made by Jacob Barker, as an officer of this Company, to the Life and Fire Insurance Company, on or about the 14th of July, and that this stock was re-transferred on the conveyance of a mortgage of Thomas Gibbons, received on the 17th July last.

The manner in which the books and accounts of the Western Insurance Company have been kept, is, on examination, found to be highly satisfactory. The monthly exhibit of a balance sheet, which your Committee find to be regularly recorded, presents a full and correct view of the affairs of the Company, and has always been open to the inspection of every Director.

Respectfully submitted by

THOMAS RICH,
JOHN C. MERRITT,
JOHN S. CONGER,
P. W. ENGS.

Judge Edwards appears, by the published charge to the jury, to have supposed that Mr. Barker had offered to purchase $50,000 worth of bonds of Mr. Flack on the day of the failure of the Company, at a discount of one and-a-half per cent., per month, and that he had told Mr. Flack that those bonds were good. The following letter from Mr. Flack puts this matter to rest. The mistake, no doubt, arose from blending the testimony of Mr. Reed with that of some other person, as Mr. Reed was the only witness that made the least reference to Mr. Barker's having offered to purchase that amount of bonds. This offer was made in May, two months before the failure, and so testified to by Mr. Reed, and it was not coupled with any representation that they were good, nor did Mr. Reed testify that Mr. Barker made any such representation. Whether this offer was made on the day of the failure, or two months prior thereto, is so vastly important, that it merits especial notice.

New-York, 16th *Dec.* 1826.

JOHN FLACK, Esq.

Sir,

I observe by the published report of Judge Edwards' charge, that he supposed that you had testified on the trial that I had offered to purchase $50,000 Life and Fire bonds of you at one and-a-half per cent., per month, discount, the day the company failed. Will you be pleased to inform me if you gave any such testimony. Please also say, whether or not, I offered to purchase any Life and Fire bonds on that, or on any other day, and oblige

Your obedient Serv't.

JACOB BARKER.

New-York, 19*th Dec.* 1826.

Mr. JACOB BARKER,

Sir,

You never did offer to purchase of me Life and Fire Bonds, to the amount of $50,000, or to any other amount, nor did you ever prior to the failure of the said Company converse with me in relation to the Bonds of that Company, nor did I give any testimony to that effect or relative to any of the transactions of that Company.

Your Obedt. Servt.

(signed,) JOHN FLACK.

RATHBONE PAPERS.

No. 1.

Agreement between Jacob Barker on the one part, and Mark Spencer and George W. Brown on the other part; for and in consideration of the agreements herein after contained, Jacob Barker agrees to sell to Mark Spencer and George W. Brown, six hundred and ten shares of stock in the Fulton bank at par, with interest at seven per cent per annum from this date, deliverable and payable whenever the said Spencer and Brown shall call for them, any time within six months from the date thereof.

And for and in consideration of the agreements herein before contained, the said Mark Spencer and George W. Brown agree to purchase from the said Jacob Barker, six hundred and ten shares of stock in

the Fulton bank at par and interest as aforesaid, and will receive and pay him for the same, within six months from the date thereof.

In witness whereof the parties have respectfully subscribed these presents, and sealed the same with their seals this twentieth day of January, one thousand eight hundred and twenty-six.

JACOB BARKER,
MARK SPENCER,
GEORGE W. BROWN.

J. H. CUNNINGHAM, Witness.

On this agreement was the following indorsement:

The dividends, if any, to be handed over with the stock to Messrs. Spencer and Brown.

JACOB BARKER.

24th January 1826.

No. 2.

INDORSEMENT.

I hereby agree to sell to Jacob Barker, the six hundred and ten shares Fulton bank stock, which he was to have furnished this day, for which he is to credit on the contract therefor, twenty one thousand three hundred and fifty dollars.

New-York, 21*st July*, 1826.

No. 3.

Whereas Mark Spencer and George W. Brown *and Thomas Hyatt*, have this day loaned me two thousand shares of Fulton bank stock, for which I have loaned

them two thousand five hundred shares of Morris Canal stock; now this agreement witnesseth that I, Henry Eckford, do hereby obligate and bind myself to return said Fulton stock to said Spencer, and Brown *and Hyatt*, on or before the first day of March next, they returning to me *at the time or times I return them* the Morris Canal and Banking company stock, viz: I have received the Fulton stock at par, and loaned the Morris Canal and Banking company at eighty per cent, and as it is only a temporary exchange, it is to be returned at the rate as delivered and received. And said Spencer and Brown *and Hyatt*, hereby obligate and bind themselves to deliver to me said Morris Canal and Banking company stock, whenever I shall deliver the Fulton bank stock at the same rates as above stated.

For H. E.

W. P. R.

New-York, May 10, 1826.

The preceding contract was in the hand writing of Rathbone, the words in italics erased, and on the back were the following memorandums: the words "said Eckford," being interlined and the words in italics erased.

In Rathbone's handwriting.

And said Bank to agree as, *I shall*, said Eckford shall deliver said Fulton Bank stock, to transfer to him the Morris Canal and Banking Company stock, at the same rate as *I have* hypothecated to them, *and to receive the Fulton Bank stock at par*,

In Mr. Barker's handwriting. as fast and in such proportions, as I deliver the Fulton Bank stock.

No. 4.

$100,000 for one year. The stock notes to be continued for two years.

In Brown's handwriting $50,000 through the Bank on business paper held by the Hudson and Lombard, or bonds of the Franklin Manufacturing Company, and a proportion of Hudson and Lombards.

Do. for one year.

Rathbone's handwriting. $50,000, on such security as we are able to give to Mr, Eckford and Mr. Barker.

Spencer's handwriting. Our contract for $61,000 stock to be extended or settled without further security.

Barker's handwriting. An average of $1000 per day for the purpose of sustaining both companies.

The fifth clause of the above memorandum in relation to the contract for $61,000 stock was crossed out, when, or by whom, does not appear The memorandum itself was written on the back of an old cancelled power to transfer stock, signed by Mr. Spencer.

No. 5.

The understanding between Mr. Barker and Messrs. Spencer and Brown is, that the friends of Mr. Barker be elected in the Bank, say two for the present vacan-

cies; and if the state of the Bank, and other urgent necessities, should require more changes hereafter, the same is to be made by Spencer and Brown, for the benefit of the whole parties

The Bank is to loan $50,000 to Messrs. Brown and Spencer, for the Hudson Company, on such business paper as they have, and on bonds of the Hudson, Lombard, and Franklin Manufacturing Companies, for one year.

$50,000 more *securities* is to be loaned by Mr. Eckford and Mr. Barker, on the best security we are able to give.

An average of $1000 of the money to be paid daily, for the purpose of sustaining the Hudson and Lombard Companies.

It is agreed and understood, that the stock notes of Spencer and Brown shall be continued for one and two years, *half each*, from this date, July 12th, 1826.

The words "Mr. Eckford and" were covered with ink, but perfectly distinguishable.

The words in italics, were interlined in the handwriting of Mr. Barker, and the other part of this memorandum is in the handwriting of Rathbone.

The following memorandum, the last of Rathbone's wooden daggers, was in Mr. Barker's handwriting, on a rough piece of paper, and in no respect explained when, or where made, or for what purpose; yet the different changes were all rung on the circumstance of its being in Mr. Barker's handwriting:

No. 6.

In Mr. Barker's handwriting	Mercantile	$50,000
	L. & F.	100,000
	Hudson	50,000
	Dutchess	50,000
	Mechanics	50,000
	Morris Canal	100,000
		$400,000

In the original contract for the exchange of Morris Canal and Banking Company stock for Fulton Bank stock, the words "at the time or times I return them," were interlined in the handwriting of Rathbone, and then erased, because they did not fully express the idea suggested by Mr. Barker, omit those words and the contract would have, after introducing the words, suggested by Mr. Barker, read thus: (see No. 7.)—conclusively proving that the article in Mr. Barker's handwriting was intended to form a part of the original contract and no condition of his.

No. 7.

Whereas, Mark Spencer and George W. Brown, have this day loaned me 2000 shares of Fulton Bank stock, for which I have loaned to them 2500 shares of Morris Canal stock: now this agreement witnesseth, that I, Henry Eckford, do hereby obligate myself to return said Fulton Bank stock to said Spencer and Brown, on or before the 1st of March next, they returning to me the Morris Canal and Banking Com-

pany stock, *as fast, and in such proportions as I deliver the Fulton Bank stock*, viz. I have received the Fulton stock at par, and loaned the Morris Canal and Banking Company at 80 per cent. and as it is only a temporary exchange, it is to be returned at the rates as delivered and received, and said Spencer and Brown hereby obligate and bind themselves to deliver the Fulton Bank stock at the same rates as above stated.

New-York, 10th May, 1826. For H. E.
W. P. R.

And said Bank to agree as said Eckford shall deliver said Fulton Bank stock, to transfer to him the Morris Canal and Banking Company stock, at the same rate as bypothecated *to them.*

The above contract was not shown Mr. Barker until many days after its date, nor does Mr. Barker believe that it was reduced to writing until a week after, although dated on the day when the exchange took place, the stock was exchanged on the 10th of May without any written agreement between the parties, nor did Mr. Barker know any thing of the particulars of the bargain, or of the stock which had been given in exchange for the Fulton Bank stock until Rathbone called on him with the paper in question, to ask his advice as the friend of Mr. Eckford, as to its phraseology, and then Mr. Barker had not the least suspicion that Life and Fire bonds had been given for the Morris Canal stock, or that there had been any irregularity in the issuing of the certificates. The words in italics were written on the back of the agreement by Mr. Barker to secure to Mr. Eckford the right to deliver the stock part at a time, and the postcript was written by Rathbone at the suggestion of Mr. Barker, to protect Mr. Eckford against the Fulton Bank, hold-

ing the whole $250,000 Morris stock, to pay the debts of Brown and Spencer.

This man Rathbone having been schooled in the Lobby, which has so often and so disgracefully controlled the deliberation of the Legislature, united with the Lobby which infects the atmosphere about the City Hall, and attended their midnight meetings, plotting measures in furtherance of his determination, "save himself who can." The aforesaid memorandums had been carefully preserved for the diabolical purpose, if he could not otherwise escape, of making the innocent suffer for the guilty, and for this purpose they were furnished as testimony. The devices of these Conspirators are so various, and they operate with such fine machinery that there is no tracing them through all their ramifications. But few of their members know any thing beyond the particular part they have to perform. They, discovering that several of the sheriff's jury were the personal enemies of Mr. Barker, no doubt caused it to be suggested that if their names were not put in the box, the whole panel might be set aside, and although that jury had for years been excused from serving as jurors in other courts, the sheriff without the least suspicion of the trick, placed their names in the box, and several of his jury were drawn in the general panel, and two of them, Messrs. Norwood and Mead, the personal enemies of Mr. Barker, were drawn to try his case. Mr. Mead was one of the North-River disputants, in furtherance of which dispute a forged or fictitious paper was sent to the Legislature, by whom Mr. Barker has never been enabled to discover, it having been withdrawn the moment the imposition was detected and pointed out, and he has not to this hour succeeded in procuring a sight of it. The following articles published at the

time of their date, will establish that they have not been got up for the occasion.

From the Republican Sentinal of March, 1822.

Mr. Barker presents his compliments to the Editors of the Republican Sentinel, and requests a place in the columns of that paper, for the accompanying documents. The letter from Messrs. Dwight, Townsend and Walker, will show the lamentable influence which the monied aristocracy has over the press; and, it is hoped, will be a sufficient apology for the delay which has taken place in the publication.

From the New-York Daily Advertiser of the 6th March, 1822.

"☞ Mr. BARKER presents his compliments to the editors of the Daily Advertiser, and requests a place in that paper for the accompanying documents. Publication is made necessary by the incorrect manner in which their reporter in Albany understood the proceedings of the Assembly on the North-River Bank question, as published in said paper of the 27th ult. Neither Messrs. Prime, Ward and Sands, nor the Washington Insurance Company, appeared before the Legislature as petitioners for the confinement of the Bank.

All the efforts of Mr. Barker to procure a copy of the fictitious paper read to the Assembly, have, as yet proved unavailing.

Documents to be published to-morrow."

March 8, 1822.

Jacob Barker, Esq.

SIR—We have been called upon this afternoon by a number of gentlemen regarding the documents of which your advertisement is composed, who, upon learning their contents, have given us to understand, that, if published, they will involve us in difficulty with

many of our patrons and friends. Not feeling willing to encounter this disturbed state of feeling, we are under the necessity of declining the insertion of the advertisement. We are, with respect, your obedient servants,

DWIGHT, TOWNSEND & WALKER.

March 6th, 1822.

New-York, March 4, 1822.

SIR,

The paper read before the honourable the assembly by the honourable Mr. **********, immediately before the final question was taken in relation to the confinement of the North-River bank, purporting to be a copy of an agreement entered into between myself and others, was not sent to the senate conformable to the public pledge made to the assembly by Mr. **********, when resisting the motion of the honorable Mr. Hatch, for the said paper to be filed with the clerk of the assembly. On application to that gentleman to redeem his pledge, he replied, that he had handed it to the agent of the bank, who had left Albany for New-York; and that it should be furnished me on my arrival here. Will you be so good as to see Mr. ********, to the end that no further delay take place in the performance of this, of all others, the most sacred obligation. This paper is necessary, as it furnishes the ground-work for legislative, as well as legal proceedings, which it is intended immediately to institute on the subject.

Very respectfully,

I am your obedient servant,

JACOB BARKER.

HON. JEROMUS JOHNSON.

Not content with the mischief done Mr. Barker, the conspirators are now endeavouring to divert the pub-

lic indignation from their own foul deeds, by falsifying a conversation he had with the District Attorney, which conversation was as follows:

After the introduction of the Rathbone Papers as testimony on the last trial, which Mr. Barker proclaimed in open court, were left in the hands of Rathbone, Brown and Spencer, and that Rathbone had furnished them for Mr. Barker's destruction, adding that how far Brown and Spencer had been concerned therein, they could explain, if they would, but as such of those papers as came from them were their own property, he did not complain of their conduct in relation thereto. The District Attorney put it to Mr. Barker, in open court, towards the close of the trial, to say, whether or not, certain things connected therewith had taken place. Mr. Barker rose, and replied with great warmth, "call me on the stand and examine me if you wish to know the truth of these matters." The jury must recollect the circumstance. When the Court adjourned, Mr. Barker mentioned to the District Attorney, that from the disposition manifested by several of the defendants, as well as from the harmless character of the said papers, he must be sensible that Mr. Barker had no hand in the frauds, if any there had been. The District Attorney's reply was, "why then do you constantly declare there has been no fraud." Mr. Barker's answer was, "there has not been any, to my knowledge, in relation to the Life and Fire, and you know as much about the other matters as I do, and if you wish the public to be made to understand the business, you should strike my name from the indictment, and call me on the stand"; whereupon, the District Attorney said, "will you become a witness." Mr. Barker's reply was "I make no bargains, but if called on the

stand as a witness, I shall, as I have a thousand times, in and out of the court, publicly declared, tell all I know; I have no secrets, my dealings have been with Mr. Eckford, and by Heaven he was honest in the support he gave the Life and Fire." This conversation between Mr. Barker and the District Attorney commenced publicly in the court, at the close of the morning's session of the court, and continued without the least secrecy or confidence, until they reached the end of the Park, corner of Chambers-street and Broadway, where they parted without stopping, and not having conversed together more than two or three minutes.

After the unqualified declaration made by Mr. Barker, of his opinions, in his opening at the first trial, its publication in the newspapers and in pamphlets at his request, the reiteration of the same opinions, in his opening and closing on the last trial, and their similar publication, which could be considered in no other light than an appeal to the people to believe the same, and that he was willing thereby to stand or fall; after all this it was not to have been expected that any one would have been hardy enough to have accused him of conduct which would have given the lie direct to those declarations so publicly and confidently put forth.

Mr. Barker, in opening his defence on the first trial, declared that there was a conspiracy for his destruction, and that he had been arraigned by a combination of rogues who would run away by the light of the funeral pile upon which they would be happy to see Jacob Barker consumed. At that time the hearers regarded the declaration as the mere effusion of a prolific imagination; but subsequent events have given to it

solemn importance, insomuch that but few now doubt the reality of the picture then so clearly delineated, and the public ere long will find out that such conspiracy is *equally levelled against the bond holders as it is against the reputation of Mr. Barker.*

In reference to these Rathbone papers, Mr. Barker has only to remark that the District Attorney stated to Robert Emmett, Esq. that Rathbone had done the state some service, and therefore he would not be tried. To purchase an exemption from a conviction by such means, furnishes conclusive evidence that he felt guilty of the crimes charged, and even then, it seems incredible, that he should be willing to have subjected himself to such awful and everlasting disgrace in exchange for an exemption from the penalties of the law. Hence, as well as from other circumstances which have come to his knowledge, Mr. Barker is forced to believe that the plot is far more extensive, and has far deeper objects (political and pecuniary) than the mere protection of Rathbone from the penalties of the law. The effects received from the Life and Fire Insurance Company, at the time of its failure, have become a bone of contention among all the parties: they were delivered to Mr. Barker; first, to satisfy confidential responsibilities—that done, for the benefit of the bond holders. On this subject, speaking of Mr. Barker's claim, his honor Judge Edwards, when charging the jury, remarked, "if confidential, then, then there was no harm in giving him the preference." Mr. Barker is now, and has at all times been most anxious to place them in such a situation, as would be most agreeable to the parties interested therein, they first liquidating the true amount due him from the said company, to ascertain

which, he has at all times been willing to submit to the decision of disinterested arbitrators, about which there has been much negotiation between the receivers in Chancery and Mr. Barker, and so far as Mr. Barker is informed, the receivers do not make the least complaint in relation thereto. At the commencement of the last trial, Richard Hough, a stockholder, who is endeavouring to deprive the bondholders of the Company of all participation in the assets, pressed through the crowd and handed to Mr. Barker in open court a letter signed by himself, touching those effects, and demanded of him to decide thereon forthwith. He opened and cast his eye over the contents, and did forthwith decide thereon, and handed back his letter saying "let the Receivers in Chancery sign all propositions touching those effects if they wish me to consider them: I don't know you in the business" Such a proposition coming from such a quarter to Mr. Barker, in court, when his mind was so entirely absorbed with the case which he had undertaken to defend without the aid of counsel, could be viewed in no other light than an attempt to betray him into some imprudent commitment.

Mr. Barker having been informed at the close of the first trial that Mr. Eckford's mind had been poisoned in relation to Mr. Barker he addressed to him a letter on the first of November, saying, "you and I had better have a free conversation with Mr. Emmett, Mr. Ogden or whatever Counsel you have the most confidence in, before any opinion be formed or expressed, or any thing done in the premises." Ever since which Mr. Barker has been anxious for such investigation, but he could not induce Mr. Eckford to agree to it until after the late unfortunate conviction, when Mr. Barker expressed dissatis-

faction at Mr. Eckford's refusal to be examined as a witness, and at his having, to others, disapproved of Mr. Barker's rejection of Richard Hough's letter, and at some other circumstances which occured pending the trial; which coming to the knowledge of mutual friends, they recommended submitting the same to arbitration. In compliance with the recommendation of such friends, Mr. Barker called on Mr. Eckford, and urged it on him, offering to make Mr. Eckford's own Counsel the arbitrators. He objected to this, but Mr. Barker understood him to agree to submit it to other disinterested men, and that he would the next day name them; various engagements prevented his doing this for two or three days, at length on the 15th of December Mr. Barker received Mr. Eckford's letter of that date, and on the afternoon of that day, they had an interview and agreed to refer every thing informally to David B. Ogden and William Slosson Esqrs. promising to agree to such further arbitration as they should recommend, and in all respects to be guided bytheir advice. They accepted the appointment and were to have met on Saturday evening, Mr. Eckford promised to attend. On Saturday at two o'clock Mr. Barker received the following note from those gentlemen.

" We have had a conversation upon the subject of the proposed meeting with you and Mr. Eckford this evening—as we do not understand that we are called upon to decide upon the rights of the parties, but, merely as men of honor, to decide which of you are right, and which wrong in your transactions with each other; we have, after much reflection, thought it our duty to decline any interference in the case.

We are yours. &c.

WILLIAM SLOSSON.
DAVID B. OGDEN.

Saturday, December 16, 1826.

On the receipt of this note, Mr. Barker, anxious to know what had induced such refusal, immediately repaired to the office of Mr. Ogden, and found Mr. Eckford and Mr. Ogden there, and that Mr. Slosson had that moment left. Mr. Barker's anxiety to have an immediate investigation did not permit him to take exceptions, but he pressed on Mr. Eckford, in the presence of Mr. Ogden, the necessity of such investigation, entreating him, if he would not agree to the arbitration, to employ counsel to examine and report to him singly, the true state of the case, to the end that he might understand the real situation of every thing; to which he yielded, and employed Messrs. Ogden and Slosson to make the examination, which service they performed that evening; and Mr. Barker has yet to learn if they considered him in the slightest degree culpable.

Four days after the examination, Mr. Barker received from Mr. Eckford his letter, dated the 19th December, which letter was written without the knowledge or consent of either Mr. Ogden or Mr. Slosson, and before they had explained to him their views of the case. It, however, was not sent until after such explanation had been made, when they were requested to deliver it to Mr. Barker, a service they totally objected to perform, saying to Mr. Eckford, that they would have nothing to do with its contents, except the single question of reference.

The two other letters of the 15th of December, were written and read to each other in the office of Mr. Nathan, on the day of their date, immediately prior to the agreement to leave the matters to the decision of Messrs. Ogden and Slosson. Mr. Barker's was retained for the purpose of copying, and Mr. Eck-

ford's was left with Mr. Nathan, which explains the reason of his saying in his letter of the 19th, that that letter was received yesterday. Mr. Barker contends that his letters are clear and distinct, and so long as he has always been willing to comply with them, it is not material whether Mr. Eckford understood his conversation to harmonize with the tenor of those letters or not. If that inquiry were material it would turn out that Mr. Eckford had not correctly comprehended the conversations to which he alluded. Whether it was Mr. Barker or Mr. Eckford who wished to have the matters of difference promptly inquired into and decided on by competent persons, every reader will decide for himself, from the tenor of the correspondence; great allowance however is to be made for the peculiarly unfortunate combination of circumstances which have taken place to overwhelm both, and perhaps to render one or both more suspicious than the facts really warrant.

CORRESPONDENCE.

(COPY.)

New-York, 1*st Nov.* 1826.

HENRY ECKFORD, Esq.

Dear Sir,

I am persuaded that we cannot, at this time, profitably discuss on paper the business to which your letter of the 29th refers. Suffice it to say, that I am, and have, at all times, been ready and willing to surrender the securities received on the

payment of the money due. What the amount due is, it is impossible for you and me to differ about. The items and vouchers will speak for themselves. You and I had better have a free conversation with Mr. Emmett, Mr. Ogden, or whatever counsel you have the most confidence in, before any opinion be formed or expressed, or any thing done in the premises. You seem to have forgotten that every thing received from the Life and Fire Company is locked up by an injunction in Chancery, and Leavitt got an injunction last Friday or Saturday on the whole amount of doubloons received; I however managed to pay Charles the $40,000, and have this day got an order for the release of the doubloons on filing security, which I intend to do to-morrow. Leavitt made **** ****** swear that he apprehended loss by the insolvency of the Mercantile Company.

Bayard tells me that he has been informed that the doubloons are sent off from Bogota to pay the other bill. * * * * * is here.

Your assured friend,

JACOB BARKER.

(COPY.)

New-York, 15*th December*, 1826.

SIR,

Believing, for a long time, that it would best comport with the feelings and interests of all parties, that our affairs should be settled by three disinterested gentlemen of character; and also, that *they* should, at the same time, settle and adjust your

accounts, and those of your Companies, with the Life and Fire Company, on fair and equitable terms, I therefore propose to you that such a course be adopted forthwith, and that the principles of the reference shall be agreed on and the gentlemen named, whenever those principles are fixed.

I am fully convinced that this is the only course that can give mutual satisfaction; and I am persuaded that you will agree with me in that opinion. Will you be pleased to answer by the bearer.

I am, Sir,

Very respectfully,

Your most obedient,

HENRY ECKFORD.

JACOB BARKER, Esq.

New-York, Dec. 15th, 1626.

SIR,

Your letter of this date is received; I am disappointed that you have not stated the names of the persons to whom you were willing to refer our personal differences; if this is not done without further delay, you must not hereafter complain at the course my honor, and that of my family, will force me to pursue.

I cannot answer for the Companies, further than to say, that when a proposition comes from the Receivers, or any other person duly authorised to settle the same, it will be forthwith treated with all respect; and if you, personally, have any claims on them, as soon as you state them, they will also be treated with all proper respect.

Your obedient Servant,

JACOB BARKER.

P. S. I shall be at No. 73, or No. 80, Beekman-st. from 4 o'clock 'till 12 this evening, and where I hope to hear further from you. J. B.

HENRY ECKFORD, Esq.

(COPY.)

New-York, 15th December, 1826.

Sir,

Your answer to mine of this morning is just received, and I confess you astonish me, when I compare it with the language you held to me yesterday and the day before. I either have lost my senses in toto, or you agreed to leave the whole business between us, and between you and the Life and Fire Company, to three indifferent men, and urged me to name them, but I was not prepared, but understood you, as I thought distinctly, to be anxious to have it done in that way. Am I now to understand you that you will not leave the whole thing to a reference should it meet with the approbation of the receivers? Be pleased to say whether I mistake you.

I am, Sir,

Yours, &c.

HENRY ECKFORD.

MR. JACOB BARKER.

New-York, 15th December, 1826.

Sir,

In answer to your second letter of this day, I have to confirm my letter of November 1st, in which I requested you to have a conference, in presence of

your counsel, before any opinion was formed. In all my conversations with you or your friends on the subject, I have endeavoured to press on you and them the expediency of that course, yet as you seemed indisposed thereto, and suggested a reference to disinterested persons, I immediately agreed. You then added, "Including all the affairs of the different companies." I replied, "So far as I was concerned therein, or had a right to agree, the transactions with them should be embraced." This I now repeat; but as neither of us are competent to bind the legal representatives of those companies, an inquiry into our personal difficulties ought not to be delayed on that account, and I understood you to agree to an immediate arbitration of our personal concerns, and that you would this day name the arbitrators. Judge then of my disappointment at the receipt of your letter, presenting a complicated case amounting to a million of dollars, and involving various parties which no arbitration could embrace. I could view it in no other light than as an excuse to get rid of an examination of our personal concerns by indifferent persons. In all our past communications, I have demanded from you, that, as an act of justice, you should come with your counsel, or some other person, and look into the true state of the affairs between us, and then we could give such shape to the proceedings as might be deemed most advisable. I again repeat the opinion which I have often expressed to you, that you are under a very great mistake as to the true course to be pursued in relation to all parties, and again express my willingness, forthwith to agree to arbitrators, to look into the whole matter, who shall have authority either to decide on the affairs between us, or to advise what

course we ought to pursue, and how far we have the power to give legal effect to such proceedings.

I request you to take notice that I shall take effectual and immediate measures to redeem myself from the reproach that has been cast upon me for endeavouring to serve those who have united to destroy me, and if you do not think proper to inform yourself of the true situation of affairs before any thing be done, you must not hereafter complain.

Your obedient servant,

JACOB BARKER.

HENRY ECKFORD, Esq.

N. B. Your first letter of this date has reference to the companies to which I am attached. Your second letter seems to have reference to yourself and the Life and Fire exclusively. If you mean this, I will most certainly agree to the arbitration.

J. B.

The two last letters were written in the office of Mr. Nathan, where a conversation took place between Messrs. Eckford and Barker, which resulted in their agreement to submit informally all matters of difference between them to the arbitration of Messrs. Ogden and Slosson, when Mr. Barker finding Mr. Eckford's mind alienated, without knowing why, and public rumour having quoted the District Attorney as authority for a portion of the calumnies circulating to his prejudice, and being anxious to convince the arbitrators, that Mr. Eckford had not the least cause of complaint, Mr. Barker addressed to the District Attorney the fol-

lowing note on the morning of the day, the evening of which the arbitrators were to have heard the case. The answer of the District Attorney will, doubtless, satisfy every unprejudiced mind on that point.

New-York, Dec. 16, 1826.

Sir,

Will you be pleased to inform me if I have ever said to you, or intimated that I supposed that Henry Eckford, Esq. had been actuated in his conduct, touching the various matters of accusation, by any other than pure and upright motives.

And oblige,

Your obedient Serv't.

JACOB BARKER.

Hugh Maxwell, Esq.

Mr. Barker has always expressed himself, when speaking of Henry Eckford, in the course of the trial, and at all other times, that Mr. Eckford was entirely innocent of any thing like fraud.

H. MAXWELL.

Dec. 19*th*, 1826.

In place of the expected meeting of the arbitrators, pursuant to the arrangement Mr. Barker as before stated, received the following note, which we republish because our compositor accidentally omitted the words "any of the legal or equitable," in the copy published in page 290.

"We have had a conversation upon the subject of the proposed meeting with you and Mr. Eckford this evening—as we do not understand that we are call-

called upon to decide upon any of the legal or equitable rights of the parties, but, merely as men of honor to decide which of you are right, and which wrong in your transactions with each other; we have, after much reflection, thought it our duty to decline any interference in the case.

We are yours, &c.

WILLIAM SLOSSON.
DAVID B. OGDEN.

Saturday, December, 12th, 1825.

Mr. Eckford then, at the earnest solicitation of Mr. Barker, employed Messrs. Ogden and Slosson to examine as the counsel of Mr. Eckford, into the situation of the whole business, for which purpose, the said counsel, but not Mr. Eckford, met Mr. Barker on Saturday evening the 16th December, when a full exhibit was made, which, so far from inducing Mr. Eckford to afford to Mr. Barker the wished for explanation, that he terminated the negotiation by the following letter, thus refusing all inquiry into Mr. Barker's supposed causes of complaint touching the last trial.

New-York, 19th. Dec. 1825.

SIR,

Your favour dated the 15th, was received yesterday, but I find it impossible for me to understand what you will, and what you will not do. Your conversations on the subject and your letters being, if I comprehend any part of either, totally at variance with each other, it does seem almost useless for me to make any further attempt at an arbitration, if your well known ingenuity was put as effectually in requisition to answer plainly *what I mean*, as it is to answer what *I do not mean*, the whole of this

business would have been arranged long ere this. I am fully persuaded of that fact. It does seem to me to be so plain a case, that I am wholly at a loss to comprehend why it cannot be answered by a plain Yes, or No. Allow me to try once more, and if you give an answer, let it be addressed to Messrs. Ogden & Slosson, my counsel in this case; for myself, I shall write no more on the subject, if any thing is done, it will be through them entirely, and there is a propriety in its taking this course, as you stated to them that whatever mode they should suggest you would strictly abide by, and obtain the necessary powers from the Companies, if required, they obtaining similar powers from the other parties. The following are the simple questions I have been endeavouring to get an answer to, viz: Will Mr. Jacob Barker for himself and Mr. Jacob Barker as an officer with full powers from the Mercantile, Dutchess and Western Insurance Companies agree to leave all matters and accounts to three disinterested gentlemen (counsellors at law,) to be settled and adjusted equitably between him and them, the Life and Fire Insurance Company and Henry Eckford individually? this is the simple proposition, if acceded to, the details will of course be settled by you and the counsel. And I have very little doubt will be very satisfactory to all concerned, and particularly to yourself, as you will get clear of a great deal of trouble, by having it closed in this way. Your professions of friendship and disinterestedness to me have been unvarying throughout the whole of this business, and the attendant difficulties, and as I understand this matter at present, this mode would be most agreeable to me, believing it would go far to satisfy all. No intentional wrong has been committed by any one as far

as I understand these matters, but I am anxious to arrange even imaginary evils if possible, wherefore my strong desire to have had these things arranged before the late trials, and indeed I did hope the trials would have been postponed until the whole thing could have been settled, believing as I did that it would have a strong bearing on them.

I am Sir, Respectfully.

Your most obedt. Servt.

HENRY ECKFORD.

To Jacob Barker, Esq.

New-York, December 20th 1826.

Gentlemen,

I have this moment received a letter from Mr. Eckford of yesterdays date, requesting me to address my answer to you. How far it was proper, after you, with his consent declined to inquire into and decide on our personal differences, for him to hand over to you the various matters contained in that letter, is not at this time a fit subject for me to remark upon. So far as relates to the business part of it, I will thank you to confer with George Griffin and Peter A. Jay, Esqrs. With those gentlemen I shall place my case, with instructions to agree to submit forthwith to the arbitration of three gentlemen, (counsellors at law) any claim Mr. Eckford has or supposes he has against me. That there be no mistake as to my meaning, you will please distinctly to understand that I am not empowered to speak for any other company than the Life and Fire company; for them I will agree to an arbitration, so far as their power of Attorney may be

considered by you as authorizing me to do so, also so far as that company may have claims on me. All overtures to the other companies, must be addressed to the President and Directors of each, and they will doubtless pay the most respectful attention to the same, but they cannot be expected to connect their affairs with each other or with mine.

It has always been my intention to make my written and verbal communications to Mr. Eckford perfectly uniform, plain and distinct, and I am disappointed at his supposing them to have been discordant. Whatever suggestions I may have made to you as to my future conduct being regulated by your advice as his counsel, your recollections and not the allegations of his letter must decide. I most assuredly did agree to be guided by your decision as arbitrators. When I failed to induce you to act in that capacity, your opinions as his Counsel would not of necessity have the same binding effect upon me, but without taxing my recollection as to what I may have volunteered to you on that subject, I do now distinctly say that I have so great a respect for your private and professional characters, that I do not think it possible for you to recommend a course that I should not willingly adopt. It will however be time enough for me to answer on that subject whenever I shall have the honour to know from under your own hands what mode you suggest for the settlement of the difference in question.

The latter clause of Mr. Eckford's letter, forces from me a few remarks. As soon as I had the information from himself in the latter part of October last, that he even imagined that there was any cause of difference between us, I addressed to him a letter dated the 1st. of November of which you have seen a copy, most re-

spectfully soliciting that he would call on me accompanied by Mr. Ogden, Mr. Emmet or such other counsel as he could place most confidence in, and let me make a full exhibit of the situation of every thing, which to this hour, he has refused to do, with the exception of your examination of Saturday evening last.

On hearing that he complained of my not adjusting the concerns of the Life and Fire company with the receivers, I applied to him for a written authority to deliver over to them the effects of the Life and Fire, releasing me from all obligations to account to him for my commitments connected therewith, which he refused to give, saying that he would sign no more papers, and if he calls this his anxiety to have every thing settled, I beg leave to remark that it was a very unfortunate way of expressing it. As to his solicitude to have the trials deferred until a settlement should take place, he took care to have his own deferred, and to withhold from me all knowledge that Doctor Dekay was an important witness in the case, until it was too late for me to benefit by it, although he full well knew that I derived from himself all the knowledge I possessed about the Life and Fire company prior to its failure, and hence the testimony of Doctor Dekay was as important to my cause as to his. The receivers will inform you that I have met all their overtures with perfect frankness, and that the reason why an adjustment has not taken place, must be ascribed to their want of authority and not to any indisposition on my part.

My cause of complaint, which Mr. Eckford's letter intimates to be imaginary, is too serious and too personal to admit of the delay necessary for uniting the numerous parties, and accomplishing the extensive objects which his question about a reference manifestly

embraces. I subpœned him as a witness on the late trial, and he refused to give testimony, which, under the circumstances of the case, was dreadfully cruel, and the advice I gave on his written application as to the phraseology of an agreement, was delivered over to the District Attorney to be used as evidence of my being a party to a transaction in which he knew I had no part or lot. I never believed he consented to such use thereof, but he owes to me and to the world to say so on paper, strongly reprobating the vile deed. If he will not consent to have my cause of complaint inquired into immediately, separate and distinct from every thing else, to the end that I may have for publication the certificate of the arbitrators, I shall consider that he denies me what I have a right to demand, and shall therefore be guided singly by what the vindication of my own injured reputation requires. As to the money part, it is a matter of but little importance in comparison with the calamity which has overtaken me in consequence of my exertions to serve a friend.

Your obedient servant,

JACOB BARKER.

To David B. Ogden, and
Wm. Slosson, Esqs.

On the receipt of Mr. Eckford's letter of the 19th December, Mr. Barker convened a meeting of the Directors of the Mercantile Insurance Company, considering it to be theirs, and not his duty, to pass on the matters touching the interest of the Stockholders of that Company, and for the purpose of having the

whole affair impartially placed before them, the Secretary of the Company addressed to Mr. Eckford's counsel the letter herewith, inviting their attendance, to which those gentlemen returned the following answer:

MERCANTILE INSURANCE COMPANY,
of New-York, 20*th Dec.* 1826.

GENTLEMEN,

Will you, as counsel for Mr. Eckford, be pleased to meet the Directors of this Company, at their office, No. 43, William-street, at 1 o'clock this day.

Your obedient Serv't.
ROBERT BARKER,
Secretary.

To DAVID B. OGDEN and
WILLIAM SLOSSON, Esqrs.

New-York, Dec. 21, 1826.

GENTLEMEN,

Not having been instructed by Mr. Eckford to meet at your office, in compliance with your note of this morning, we do not feel at liberty to attend.

We are, with great respect,
Your obedient Servants,
WILLIAM SLOSSON,
DAVID B. OGDEN.

The PRESIDENT and DIRECTORS
of the Mercantile Insurance Company.

The Directors of the said Company not being aware of any claims on them, none having been defined, and

no application or proposition before them, adjourned without taking any order on the subject. Mr. Barker then applied to Mr. Ogden to know if they proposed doing any thing further in the business in behalf of Mr. Eckford, who replied, that his understanding was, that nothing more would be done in relation to an arbitration; hence the business part of it remains in chancery, where, if it had been permitted quietly to have progressed, it would, in all probability, have been better for all parties, as it is not probable that the persons denominated co-conspirators, can settle all these matters among themselves, in such a manner as to give satisfaction to the creditors of the Company, who are the parties, of all others, the most entitled to be consulted, and to have a voice in making such settlement.

COURT OF OYER AND TERMINER.

Jacob Barker and others.

ADS.

The People.

Jacob Barker being duly sworn, testifies and saith, that, if a new trial should be granted him, he expects to be enabled to prove by the testimony of Joseph G. Swift, that he, this deponent, had not any agency in managing the concerns of the Life and Fire Insurance Company, prior to its failure, except to furnish money, principally as the agent of other companies and monied men on such securities as the company placed in his hands, all which were at the time deemed good, and except also to assist in the collection of the New-Orleans debts. That he was never consulted about

the loans made by the company, of its notes or bonds, that he never examined or knew any thing about the situation of the books and accounts of the company, that he was totally ignorant of the nature or extent of the bad debts of the said company. Which testimony this deponent could not procure on the last trial for reason that the said Joseph G. Swift was at that time included in the same indictment with this deponent,

JACOB BARKER.

Sworn before me, this 21st day of December, 1826.

M. C. PATTERSON, Commissioner &c.

Jacob Barker respectfully represents to this honorable court, that, on an inspection, this day, of the papers in the hands of the District Attorney, which were produced on the part of the People as evidence on the trial of this cause, he discovered, that in the contract in the handwriting of William P. Rathbone, for the exchange of Morris Canal for Fulton Bank stock, the following words had been interlined and erased, " at the time or times I return them," and at the close of Rathbone's memorandum, on the back, the following words, " and to receive the Fulton Bank stock at par," had been erased, which, on a comparison with the words on the back of the same paper in the hand writing of your petitioner, plainly indicate that the words so written on the back by your petitioner were to be substituted for the erased words, and introduced into the original contract, following the words " the Morris Canal and Banking Company stock," Rathbone having attempted to embody your petitioner's suggested alteration by such interlineation and not having clearly expressed the

idea, your petitioner took the pen and wrote the words in question. This entirely removes the inference contended for by the District Attorney, that the article in the hand writing of your petitioner, was to have been a separate and independent condition of his or some other person, and it also proves conclusively that the article, and also the words interlined and erased, were written subsequent to the original paper dated the 10th of May, and in the absence of all proof as to the time, is it asking too much to suppose that it was written after Brown had taken the original paper to the board of directors of the Fulton bank and withdrew it therefrom to have some alterations made therein, according to the testimony of Mr. Leavitt, or some other member of that board? Your petitioner begs leave to hand herewith a copy (paper No. 1) of the original agreement with the aforesaid erased words inserted, and also a copy (paper No. 2) omitting those words, and also a copy (paper No. 3) incorporating therein the article from the back of the paper, which article is in the hand writing of your petitioner; and your petitioner respectfully requests that this honourable Court will compare them with the original paper now in the hands of the District Attorney.

Your petitioner also asks leave to repeat that he cannot imagine that there could have been any impropriety in this transaction, had the Morris Canal stock been full stock regularly issued according to the natural inference to be drawn from the tenor of the contract. Your petitioner further asks leave of this honourable Court to present for their consideration, the following original receipts for one hundred and fifty thousand dollars which he as the officer of the companies to which they refer paid to Henry Eckford Esq. one half

of which was in the bonds of the Life and Fire Insurance company, which the said Eckford received at par in June and July, in payment for his own private property, and which furnished to the mind of your petitioner conclusive evidence that the said Eckford considered the bonds of the said Life and Fire Insurance company perfectly good, and as your petitioner derived all his knowledge in relation to the condition of said company from Mr. Eckford the president thereof, he humbly insists that he could not but have adopted from such testimony the same opinion. Your petitioner also begs leave to hand herewith an extract from the minutes of the proceedings of the Mercantile Insurance Co. of New-York, by which it will appear that this business was done pursuant to a resolution of the directors, passed at a regular meeting. All which is respectfully submitted.

JACOB BARKER,

20th December 1826.

In the great haste with which this pamphlet was put to press, the following passages in Mr. Barker's closing speech, were omitted. They should have been inserted following the words " How could I help believing the company good when its president gave such unanswerable evidence, that he thought so," on page 233.

Court of Oyer and Terminer.—Nov. 30.

JACOB BARKER'S SPEECH—Continued.

So many changes have been rung on my having said "I knew," that I will ask you if you had visited a sick

friend, was alarmed for his fate, told by the doctor he must die, and in a few days was informed of his death, saw all the family in tears, visited and attempted to console them, attended the funeral, and saw the green sods carefully placed over the grave, would you not, if called into court, have said unhesitatingly, on your oaths too, that you knew he was dead? And if it afterwards turned out that the whole affair of the funeral, the tears of the family, &c. was an imposition, all counterfeit, and the man had run off to Canada to cheat his creditors, would you expect to be convicted of a conspiracy, because you said you knew he was dead, your not having seen and recognized the corpse after the vital spark had fled, being the only evidence offered that you knew he was not dead?

Now, gentlemen, I had as much reason to say I knew as you would, in such case have had; yet I knew no more about the goodness of the Life and Fire than you would have known of the death of your friend; and I admit, that it was a very careless way of talking, and hope to improve in that particular, by my suffering on this occasion, which has been excessive in a pecuniary point of view, as well as in feeling, I being unable to attend to the vast concerns entrusted to my superintending care, my mind having been wholly occupied in the vindication of my character for the last four months; my credit destroyed at home and abroad; my friends frightened from endorsing or lending me their notes, and monied institutions from affording me their usual facilities; and all this without my having done any wrong. The calumnies that have been circulated to my prejudice, have been without number, and through the newspapers, one of which you have it in evidence, was

so far under the control of some of the defendants, whose counsel have been here attacking me, that they had the mortgage of the establishment, which mortgage was made over to the Fulton bank, as security for money borrowed; and although it does not furnish any evidence of their having been the authors of the calumnies, it does that they could have prevented them, had they thought proper to have done so; they considered me as conducting rival institutions, and may have vainly supposed that theirs would have been exalted by their crying down others to their own level; if so, I do not consider it in any other light, than a want of skill on their part, in managing financial matters.

Great stress has been placed on the supposition that I made money by these operations. I wish I had. I should proclaim it with great joy and justify my right to have done so, but I am sorry to say it was very far otherwise, insomuch that I was disappointed of my expected power to advertise that I would, on the first of the present month, pay, at sight, all the Exchange Bank notes out. When I shall have that power has now become uncertain: I hope the period is not far distant. I supposed I had earned enough, but I lost it by these speculations, which loss has been proved to you by Messrs. Clarkson, Nathan, Lawton, and Nevins; and should I have paid them so much for Fulton bank stock? Should I, for so trifling a consideration, so late as July, have given them the option to have sold me fifty thousand dollars worth of Fulton stock at eighty, if I had known that two hundred and fifty thousand dollars of their capital had been loaned on void certificates of stock in the Morris Canal? Certainly not.

It has been said that I had Messrs. Spencer and Brown, bound hand and foot. It was Rathbone who had them thus bound by the sale of five hundred thousand dollars worth of stock at fifteen per cent premium, when I sold them sixty thousand dollars worth at par, and when they wanted more time to pay, did I require any other condition than common prudence dictated, or did I oppress them with any extortion? Nothing was required but lawful interest.—Why are all these things brought into this trial? No doubt for evil purposes. But when properly considered the only evidence they furnish is of the liberality with which I dealt with these men.

It has been objected that I told Garniss that I was going out of town, and that I did not go; it is now fully in proof that I did go, and on the very day I told him I intended to go; but it is objected that I did not stay as long as I originally contemplated, and suppose I did not? Have any a right to inquire what brought me back sooner than I had proposed to return? If they have, I would tell them I was favoured with quick passages both ways, and that I loved business better than pleasure, &c. &c. Much complaint has been made about the dividends of the Life and Fire Insurance Company and what had I to do with that? The stock of the Fulton Bank was according to the proof of Mr. Cheesebrough, all paid up in full, and regularly transferred to Mr. Thurston, and not received from the bank in exchange for Morris Canal stock; but with this I had not any thing to do, as a stock dealer never looks beyond the certificate duly signed by the officers of the institutions. But there is one fact connected with this transaction which it may be well to call your attention to, in case you require more proof that Rath-

bone was the mover of all this business, which is, that by the books of the Fulton bank he witnessed the transfer of one thousand shares, and that some other person by the name of Rathbone witnessed the other, so that it was him and not Vermilyea who took away this stock from the Bank as he did the stock from the Tradesmen's bank; hence all these efforts of his to make it appear that others did these things which have been denominated wrong, and which were done by himself singly.

It is attempted to infer, that I was not sincere when I expressed my confidence in the Life and Fire bonds because I got security. Was it not prudent to take security for such large sums advanced? Was not that company, in common with all others, liable to the vicissitudes of fortune? Might it not be very good on one day, and bad very soon thereafter? This is so plain, that I will not attempt to demonstrate it. I wish I could ascertain how far it is necessary for me to go in developing all the circumstances of this complicated case, that I might not unnecessarily trespass upon your time; as I have no means of knowing this, you will excuse me if I dwell upon unimportant branches. Mr. Leavitt himself, testified that the two thousand shares exchanged with Mr. Eckford, produced to the bank more money per share, than the one thousand three hundred shares of the original lot of stock which remained in the bank until the two thousand shares were settled for; therefore the bank sustained no loss by the exchange with Mr. Eckford. I cannot conceive what I have to do with this matter; if the bank had lost the whole amount, it would not have been my fault, as I had no part or lot in procuring it from them.

That you may have a full justification of my solicitude to preserve from ruin the Fulton bank, I might

notice the disastrous dealings of Messrs. Spencer and Brown with that institution.

But as the testimony is plain and distinct upon that subject; and as I believe that they applied all the money they drew to pay other debts, I will proceed to the consideration of the conduct of the two presidents. First, you heard Mr. Leavitt apologize for the testimony he gave on the former trial, by saying he was excited and embarrassed by the tedious investigation of Mr. Williams. You must recollect, there has been no such excitement on this occasion. I examined him with great delicacy and coolness, and you heard what he said in relation to the account current; how he demonstrated his want of knowledge of the operation of figures; how he insisted that the true way to ascertain profits on sales was to add the charges to the gross amount of sales. Either he or I are as dumb as beetles on the subject of accounts and figures, and you, gentlemen of the jury, know which. If I am right, you must admit that he is a very incapable man to be at the head of a monied institution, whose operations might reach half a million a day.

Besides, he testified that he bought out Cheesebrough to get his place—that $2000 of the money paid therefor came for interest on overdrawings—that the said interest money never appeared on the books of the bank, and never was disposed of with the knowledge and consent, or by the authority of the directors. I will not urge the nature of his conduct farther, as it can do me no good to prejudice another. As to Mr. Cheesebrough, he swore he took the bonus because he had lost by a speculation in the stock of the bank. Had Jacob Barker done what these men have done, and what others have told you they themselves

have done, would he have appeared here urging his innocence ?. No—be assured, he would have shrunk from the battle and hid "his diminished head;" and yet you are to be asked for a verdict against him on the testimony of such men.—You will remember that I kept none of those kiting accounts, which have been brought before your view by several witnesses. I kept no such accounts with any bank, nor did I deal with the Tradesmen's the Morris Canal, nor the Fulton Banks, except in the latter, and I had from the formation of the bank to the time of its difficulties only two notes discounted there, and drew but two checks for their proceeds. Yet the District Attorney has, in every stage of the trial, bent the whole power of his mind against me. Does he think this blending and degrading the innocent with the guilty, if there are any guilty, calculated to preserve the respect of the people for the laws and for the administration of justice. What could he do more likely to bring the courts, jurors and law all into disrepute ? He knew that I had no connexion with any of the defendants on trial. If he had any regard for justice, why did he not let me rise or fall on my own merits ? Why did he not give me a separate trial ? Gentlemen of the jury, you cannot have forgotten how ardently I did plead for it. There must be something in this business we do not any of us understand—some hidden cause secretly at work.

(To be Continued.)